UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN THE MATTER OF,

CITY OF DETROIT, MI
______________________________/

Case No. 13-53846
Detroit, Michigan
September 30, 2014
8:31 a.m.

IN RE: CONTINUED TRIAL RE: OBJECTIONS TO CHAPTER 9 PLAN
BEFORE THE HONORABLE STEVEN W. RHODES
TRANSCRIPT ORDERED BY: ROBIN WYSOCKI

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(Court in Session)

THE CLERK: All rise. Court is in session. Please be seated. 13-53846, City of Detroit, Michigan.

THE COURT: It appears everyone is present. Let's proceed.

MR. HAMILTON: Good morning, Your Honor. Robert Hamilton of Jones, Day on behalf of the City of Detroit. Our next witness is Vyto Kaunelis of OHM. Your Honor, we have binders of the three exhibits. I'm going to ask, can Ms. Nelson approach with them for the Court?

THE COURT: Sure. Please raise your right hand.

(WITNESS VYTO KAUNELIS WAS SWORN)

THE COURT: All right. Please sit down.

MR. HAMILTON: They're thick binders, Your Honor, but there are only three documents.

THE COURT: Okay.

DIRECT EXAMINATION

BY MR. HAMILTON:

Q Good morning, Mr. Kaunelis. Can you tell the Court who you are?

A My name is Vyto Kaunelis. I'm an engineer with Orchard, Hiltz, and McCliment, Incorporated.

Q Okay. And is that commonly referred to as OHM?

A Yes.

Q And can you describe for the Court what is OHM?

A We are an architectural engineering and planning consulting firm.

Q And how long have you worked at OHM?

A I've worked for 11 years at OHM.

Q What is your title there?

A I am a principal and the chairman of the board.

Q All right. And what are your job responsibilities at OHM?

A I typically work for several clients. I represent my clients in various activities, various engineering studies performing various engineering things for them making sure that the engineering work we do for them meets qualities of standard, meets their needs that they're after, getting the resources of the firm to provide whatever, whether it's a study or a design, or construction activities.

Q And what type of engineering work do you focus on at OHM?

A I'm a civil engineer and I focus on water resources. My degree is in hydraulics and hydrology.

Q Okay. And when you say water resources, does that typically include just water systems, or also sewer systems, or both, or how would you break that down for the Court?

A All different types of water. So water systems, sanitary sewer systems, storm sewer systems, combined systems.

Q And how long have you been working in connection with providing engineering services for water and sewer systems?

A For my entire career which has been about 38 years.
Q Okay. Well, where did you work before you joined OHM?
A Before OHM I worked for Wayne County Department of Environment. I was the Deputy Director. Worked there for ten years.
Q And what did you do for Wayne County when you were -- you were the Deputy Director of what for Wayne County?
A It was the Department of Environment. Wayne County has a waste water system. The down river system where there's a waste water treatment plant and a major collection system that takes flow from the various communities that it serves and transports them down to the waste water treatment plant.
We also had the northeast system which takes -- flows from the northeast portion of Wayne County and the southeastern portion of Macomb County, collects that and transports it to the Detroit water and sewer system. And the same thing for the Rouge Valley system which is the western part of Wayne County, also touches a little bit of the southwest portion of Oakland County. Again collecting flow from the communities, bringing that to -- through a collection system to the City of Detroit system.
Q All right. And in connection with your work as the Deputy Director at Wayne County, did you interact with the Detroit Department of Water and Sewer?
A Yes. In -- in various capacities. One is as a customer.

The -- representing the -- for example the western Wayne communities in -- in transporting to the DWSD and working with them in the northeast system.

Also we worked on the Rouge River national wet weather demonstration project which was a -- a very major project to look at wet weather treatment and look at how to restore the Rouge River. And as part of that working with DWSD as the federal grant money flowed through Wayne County. And so we worked with DWSD on some of those grants. For example, some of the CSO basins that were built in Detroit were financed through that.

Q And when you say CSO basin, what does CSO stand for?

A Combined sewer overflow.

Q Okay. And in connection with your work at Wayne County and interacting with the DWSD, did you have occasion to review the department's five year capital improvement plans?

A Yes.

Q Commonly referred to as CIPS?

A Correct.

Q And what was the nature of your involvement or interaction with the department with respect to their five year CIPS?

A Typically the department would publish each year annually a capital improvement program. And as a customer the -- some of that capital improvement is paid for by the customers.

It's allocated in various ways, so it's looking at the projects that affect the customers in Wayne County and to make sure that those projects are reasonable, that they make sense, and that the magnitude of the project is -- is reasonable for the work that needed to be done.

Q All right. And prior to working for OHM, and prior to Wayne County, where did you work?

A I worked for a firm called McNamee, Porter and Sealey for 17 years. They have since become a part of a big national firm Tetra Tech.

Q Okay. Did you graduate from college?

A Yes. The University of Michigan, Bachelor's and Master's Degrees in civil engineering and hydraulics and hydrology.

Q And then after you left Wayne County and went to work at OHM, did you continue to work with Wayne County and DWSD?

A Yes. I continued my role as working with DWSD through Wayne County and also the Wayne County saw the need on the water system as well for the communities in Wayne County to interact on a more technical basis with DWSD. So I also represented the communities in Wayne County on the water side as well.

Q And in representing them at OHM, representing the Wayne County communities, were you again reviewing the five year CIPS that were issued by the department?

A Yes. That is correct.

Q All right. So you have been reviewing the CIPS on and off for the past how many years, 20?

A About 20 years.

Q Okay. All right. Can we bring up on the screen Exhibit 178, just the first page. And you should -- you should be able to see the screen in front of you also, Mr. Kaunelis. Can you tell the Court what this is?

A This is the -- the cover from a ten year capital improvement program that we developed. We were hired by DWSD through the -- actually through the emergency manager to develop a ten year capital improvement program.

We were hired along with a number of expert firms that -- that had a lot of knowledge of the DWSD systems to develop a ten year CIP.

(City's Exhibit 178 was identified)

Q What was your understanding of the purpose of -- of developing this ten year CIP?

A As part of the bankruptcy process the -- the emergency manager needed to know what kind -- what's the magnitude of the capital improvement program that was going to be necessary for DWSD for the next ten years.

Q And do you have an understanding as to how your report would be used when you were preparing it?

A I knew it would be used in the financial projections. I did not know the specifics.

Q All right. Can you describe for the -- the Court how you went about preparing this document once you were retained to do so?

A Yes. We were -- along with OHM, the -- the various firms where you see the logos at the bottom were also retained. These are all firms that have been actively involved with the DWSD system for many years, had specific expertise on different parts of the system.

For example Arcadis is a firm that has done a lot of work at the waste water treatment plant and was very familiar with the needs at the waste water treatment plant. Wade Trim had done a lot of work on the Detroit combined sewer overflow facilities and the pumping stations.

CDM Smith was working on the master plan update along with Tucker, Young, Jackson, and Tull is a major sub consultant to them. And CH2M Hill is a firm that had actually done the earlier master plan back in about 2003, 2004.

Q All right. Who was the person that led this group of various consultants to prepare this document?

A I did.

Q Okay. And how did you go about deciding which additional firms would be involved as part of your team to develop this program?

A Four of the firms were suggested by DWSD. That would be Arcadis, Wade Trim, CDM Smith, and Applied Science. And we

suggested two additional firms, CH2M Hill and Tucker, Young, Jackson, and Tull.

So part of it was DWSD suggested folks that were well -- that knew the system well, that would work well with it. We concurred with that. And then we asked that we add a couple other firms which they concurred.

Q What was your understanding as to why the four firms that the department suggested, why they already had an understanding of the department systems?

A For example, Arcadis, some of the people that worked there, they had worked on a needs assessment study for the department starting in about the year -- about the year 2000 or so they had done an extensive evaluation of the waste water treatment plant, what the needs were there.

And then they had continued to work on it. They had done updates to that needs assessment every couple years since that period of time. So they were very familiar with the needs, what work had already been done, what was the further work that was necessary to be done.

Similarly, CDM Smith was very familiar with the water system. As doing the master plan update, they were very familiar with that.

As I indicated, Wade Trim, on the combined sewer overflow facilities and the pumping stations, and then Applied Science on the linear systems, the piping systems.

Q All right. Did the department already have its own existing ten year CIP plan at the time?

A They had a five year capital improvement program.

Q Okay. In preparing the ten year CIP, did you have discussions with anybody outside of the department as to what should be included in the capital improvement projects included this plan?

A Yes. When -- within the team, once we developed a draft of what we thought was a -- a reasonable program, we did meet with the three customer counties, Wayne, Oakland, and Macomb to get their input on the capital improvement program as well.

And then after we had incorporated their comments, their suggestions, then we met with the upper management staff of the department, Sue McCormick, Sam Smalley on the waste water side, and then Cheryl Porter on the water side. And I think there were a few others involved as well.

Q All right. And does this document contain -- what does this document contain in terms of capital improvement projects? How did you decide what to put in here?

A The -- when we started the -- the program -- the project, the first thing that we did is we asked that each of the firms -- we divided up the -- the work into the different areas depending on the areas of expertise.

And we asked the firms to internally with their staff come up with what they thought for their portion, what would

be a reasonable capital improvement program. We asked them to list the projects. We asked them to estimate the cost.

And we asked them to -- actually we did a ranking from one to five, things -- one ranking was things that were very clearly needed and were high priority that needed to be done right away. Five were things that they had a good sense needed to be done but probably were going to be towards the end of the ten year program and perhaps were not really as well defined.

Q All right. In -- in preparing this document and including the projects during the ten year span that we've talked about, did you consider the existing five year CIP that had already been prepared by the department?

A Yes. We did not directly -- we did not start from that as the base document. We wanted to start independently to look at what the -- the experts on our -- our group thought were the right things that needed to be done.

By and large the projects that we had in the -- that we came up with were similar to the ones -- in the first five years were similar to the ones that the department had. But we did not constrain ourselves by what they had previously identified and we didn't constrain ourselves by their cost estimate or their plans for timing. We tried to do that independently.

Q And so what is -- in terms of the end result, how does

the first five years in this document 178, compare to the -- at that time the existing five year CIP of the department?
A We did -- when we -- we came up with our -- our -- our final document we added up the first five years of -- of our program and we found that it was very close to the -- the monetary value that the DWSD five year CIP was. We did not try to do a line by line, project by project comparison.
Q All right. Are there -- were there any projects that were in the department's five year CIP that are not included somewhere in your ten year CIP in this document?
A No.
Q Okay. All right. Are the projects that are identified except for in Exhibit 178, adequate to enable the department to provide adequate levels of water and sewer system over the next ten years in your opinion?
A Yes. We believe it is a very reasonable program that will provide adequate service for -- for the ten year period.
MR. HAMILTON: Your Honor, earlier in this case Mr. Moore testified that he relied upon this document in preparing his projections for the department and on that basis we introduced Exhibit 178 as -- into evidence as reliance material for Mr. Moore. At this point I would offer Exhibit 178 into evidence for all purposes.
THE COURT: Any objections?
MR. SOTO: No objection, Your Honor.

THE COURT: All right. It is admitted.

(City's Exhibit 178 was admitted)

Q Mr. Kaunelis, could you explain to the Court what the difference is between a distribution main pipe and a transmission main pipe in -- in the water system for Detroit?

A Yes. The transmission mains are the typically the larger mains. And typically they -- they take water a longer distance. So the transmission to take it for -- for example from the water plant to the further communities, particularly in a regional system like this you're going to have pipes that are going to -- to transport the water significant distances.

Compared to the distribution system, for example, each of the communities that are served by the Detroit Water and Sewer Department system have their own distribution system. So for example, a community like Auburn Hills, there's a transmission main that's owned and operated by DWSD that brings the flow to a meter pit.

At that meter pit it's -- it's -- it's metered for billing purposes. And then at that point it's -- it's -- the remaining pipes are Auburn Hills for distributing the flow in the system, in their own system.

Within the City of Detroit you have actually a combination of transmission mains as well as distribution mains.

Q Can I ask you to sort of bring up Page 13 of this

exhibit? And could you -- no, that's -- it's actually Page 11 of the exhibit. Page -- there you go. Could you expand the first paragraph at the top?

All right. Mr. Kaunelis, the -- the first sentence where it talks about 837 miles of transmission main. What is that a reference to?

A That's the -- the larger water mains that -- that take the flow basically from one part of the system to the longer distances that transmission the larger pipes.

Q Right. And so those transmission mains are they just within the City of Detroit, or do they go outside the City of Detroit?

A They go outside the City of Detroit. Within the City of Detroit it's defined as pipes that are 24 inch and larger. So 24 inch and larger are transmission mains, smaller than 24 inch are considered distribution mains.

Q And then the pipes that go outside of Detroit, those are still transmission mains?

A That's correct.

Q And what do they do?

A Again they -- they take the flow for example from the water treatment plant and take in all the way to the community boundaries for the other communities that they serve.

Q All right. Now there's a reference to the 3,100 miles of distribution and service main of the DWSD system. What is

that a reference to?

A That's the pipes within the City of Detroit that take flow from the transmission mains and deliver it to the individual residences or businesses.

Q Okay. And those -- the distribution and service main pipes that are within the City of Detroit, who owns and maintains those pipes?

A DWSD does.

Q Okay. And the distribution pipes that are in the outside counties -- outside counties, who owns and maintains those pipes?

A The individual communities.

Q Can you bring up Page 1 of this exhibit? No, the -- I'm sorry, it would be Page 3 of the exhibit. There you go. Can you blow up the second paragraph at the bottom there?

All right. Mr. Kaunelis, can I ask you to explain the last sentence of this paragraph for the Court?

A Yes. The -- the distribution system and -- and there is a similar corollary on the waste water side with -- with the collection system. But the distribution system pipes that are within the City of Detroit, those pipes are in the rate analyses, those costs for maintaining and operating those pipes are allocated to the City of Detroit. That's a cost to the retail customer.

They -- in -- in looking at the -- in developing a cost

for those piping systems we had to estimate a reasonable amount of -- of rehabilitation and replacement cost for those pipes.

Because the -- we understand that affordability within the City of Detroit has been a concern, we --

Q When you say affordability within the City of Detroit, who are you concerned about being able to afford it?

A The City of Detroit retail customers. So the individual residences and businesses within the City of Detroit.

Q Okay.

A They have done a -- as part of working with the state, they had done some financial affordability analyses and they had shown that the criteria for affordability within the City of Detroit was exceeding some guidelines, EPA guidelines set by EPA. So they -- they are considered -- it is considered financial issues are considered in the permit process by the state.

Q All right. Now does this paragraph and that concern relate at all to the transmission mains or the distribution mains?

A Strictly distribution mains.

Q All right. So this isn't relevant to the 837 miles of transmission mains?

A That is correct.

Q All right. And with respect to these -- this is the

3,100 miles of distribution mains, is that right?

A That's correct.

Q And with respect to them, can we go to Page 27 of this document which is I believe it says 9 of 11 at the bottom. Can we blow that up? Just the text on the left if you could blow that up. We can see it better. There we go.

All right. Can you look at item number 46 and describe what this is referring to for the Court?

A In Item 46, that's the leak detection work. The -- it's suspected that the water mains within the City of Detroit are -- are -- have a lot of leaks. And so there is a lot of water being lost in that. So that item is the work to track down the -- the areas where they have significant leakage.

Q Why is it in yellow?

A That is something that's allocated to operation and maintenance funds. It's not -- it's not allocated to a capital improvement. Since it's ongoing work that does not result in a new asset, it is considered operation and maintenance work. So you won't see that appearing in the totals of the capital improvement program.

Q All right. Now can we blow up Item 45 right above it? All right. What does this -- can you describe for the Court what this refers to?

A This refers to the work of rehabilitation and replacement of water main -- the -- the distribution mains within the City

of Detroit. And we looked at -- there's about 3,100 miles.

What we looked at there is the Detroit future city's report that talked about planning for different areas of the city. And talked about the work to concentrate in the higher density areas, the downtown area and then the -- the industrial areas as areas to concentrate on.

And so in looking at the cost of and estimating a -- a capital improvement program for water main replacement, we considered the different areas and we estimated that we would replace about 1% or about I think it ended up about 16 miles per year of water main within the distribution system.

Q Is that a -- a reasonable amount of -- of -- for a replacement allowance for the distribution mains in the City of Detroit?

A Yes. It is a reasonable amount. It is about the lowest reasonable amount that we felt we could recommend. Because of the affordability we were trying to keep it as -- as low as possible to keep the rates affordable, but we felt that that amount was -- was reasonable. It -- it made sense.

Q Okay. Can we go to now Page 25 of this exhibit? Can we just blow up the text on the left hand side? There you go.

All right. Mr. Kaunelis, can you describe generally what the items are in Items 32, what those refer to?

A These are -- these are pieces of the transmission main that we felt were the high priority for replacement or

rehabilitation. These are some of the projects like B and D are remaining parts of projects that the department already had underway that they were in phased work they're about -- I think they were doing -- each of them was done in about three phases and this is the final phase of -- of those projects.

Q All right. How did you determine which portions of the 837 miles of transmission mains needed to be repaired -- repaired or replaced in this particular item?

A The B and D, those works were in process because they had problems with that particular pipe. There was a -- it's the type of -- it's a type of pipe that they had problems in the manufacture of that pipe.

The -- it's -- it's a problem with quality control of that pipe. It didn't just affect DWSD but other large utilities as well. And so it was known that those sections of pipe were problematic. They had experienced failures that were higher rates of failure than you would expect for a -- a pipe of that type. And so they were working on providing a parallel pipe for each of those.

Q Is there a -- a basic protocol, or -- or number of breaks, or leaks that indicate the need to replace a pipe?

A DWSD uses a -- a number of five breaks per mile for the distribution system. So for the smaller pipes they use five breaks per mile.

For something like the transmission main, you're going to

look at something -- a lower number than that. Even a couple breaks per mile will probably trigger a more detailed investigation as to why you're seeing that kind of a breakage problem with -- with a large pipe like that.

Q And with respect to Item C on 32, on Telegraph Road. Why is that there?

A That's there because the Michigan Department of Transportation is doing a major road project on Telegraph Road. And so at the -- having the opportunity while the road is torn up to replace an older water main is good -- good practice, good business practice to take a look at it in conjunction with other infrastructure, coordinate it with other infrastructure. That's the best time to do that sort of work. It's the most cost effective time to do that work.

Q And it's most cost effective because why?

A You already have the road torn up. Somebody else is paying for the road replacement. There's already a big construction project there. So you're -- you're -- there is significant savings there.

That particular piece of water main is of an age and they have experienced some -- some incidents of problems with that pipe that they felt that that was a good candidate for replacement.

Q If -- if the Department of Transportation wasn't already tearing up Telegraph Road, would you have included this

project in the first five years of your CIP?

A No.

Q Okay.

A No. It probably would have been beyond the ten year.

Q All right. Is that a typical practice among cities in the United States, to take advantage of transportation projects that -- take advantage of those opportunities to replace the water mains?

A Yes, absolutely. There's nothing more frustrating for people than to see a new road put down and then a few years later the road ripped up to replace a water main, or vice versa.

Q All right. Can we blow up item number 34 on this? All right. Can you describe for the Court what this is, Mr. Kaunelis?

A Yes. This is a -- this is a general allowance for additional transmission main replacement. In addition to the known issues that we have with some of the existing mains, we know that there needs to be a ongoing program of transmission main replacement so that's -- we've allowed for that.

Now that could be in other cases, for example, where MDOT is doing a project that you may again choose to -- to do a water main replacement as part of that project, or if there are over the course of the ten years it would not be unusual to find that there's another section of main someplace that

for one reason or another is determined that it's a reasonable candidate for replacement.

Q Uh-huh. And what is the most efficient and cost effective way for a city to go about replacing its -- its transmission mains?

A In terms of studying which ones to --

Q Yes.

A Yes. Asset management is -- is a -- is the title that's often used now as the -- the way to systematically look at what parts of your system are the highest priority for rehabilitation or replacement. So you look at a -- a variety of factors of the -- the system.

For example, you might use the age, the material of construction, the period of construction, the incidents of past problems with that particular infrastructure, and you may do some specific testing to determine the condition of the -- of the system to determine where you need the work.

And in the asset management program then you'll typically lay out which pieces of the system you're -- you believe are the highest priority that need to be handled.

Q Why wouldn't you just estimate what the useful life is of a particular transmission pipe and then replace it once you've exceeded the useful life?

A The -- with a major system like this there's a tremendous investment in the infrastructure in the -- in the pipes in the

plant and you want to maximize the benefit of that investment. So you want to get all the useful life out of that investment that you possibly can.

In some cases that may mean selective rehabilitation. For example if you have a -- a section of main for -- for whatever reason. Perhaps it's in a particularly corrosive soil that's eating away at the -- at the pipe, the metal is deteriorating rapidly, you certainly want to try to find the smallest piece that you can replace rather than replacing everything. You want to replace only the pieces that are -- that show the sign of distress and let you know need to be taken care of.

Q What is the typical practice among cities both here and -- in this country and elsewhere with respect to replacement of their transmission mains?

A Usually a -- for example under 32 there are specific projects with a specific reason why each of those are on there. So you want to budget for a certain amount of work but then when it actually comes time to do the work, you want to make sure that you have a very good justification for the specific section that you're addressing.

So for example, the first item on there is a 96 inch main that is now under a landfill. And so there's very much of a concern of contamination of that pipe and getting that out from underneath the landfill, putting in a parallel pipe.

So you have a very specific reason why that -- that project is on there. So you're not actually going to do it just based on -- on something -- a single parameter like age. You're going to do it based on the best available information that you have on something specific needing to be done.

Q Would it be fair to infer from Item 34 that the department only plans to replace one to two miles of its transmission mains a year for the -- for the next 100 -- or 500 years?

A No. You certainly have under Item 32 there, you have a very large number of -- I don't know how many miles that is, but it's a large number of miles that you're already doing. And so the Item 34 is in addition to that.

The expectation is if you were to do the next ten years, you would see again a -- a list of significant number of projects that you know specifically what those are and why they're being taken care of. And then in addition you again have a allowance for things you don't know of at that time.

Q All right. After you completed this ten year CIP, Exhibit 178, did you continue to do work regarding the department's capital improvement plans for the foreseeable future?

A Yes. In fact the department does a rolling five year CIP. So each year they -- they look at another year, they add another year to the program. So they're always looking out

five years. And it's always adjusting off of the previous five year program.

Q All right. And were you asked to prepare any additional reports this year for the department regarding its water and sewer systems?

A Yes. As part of the financing for the sewer financing, the bonds that they were going out to sell, we did a engineering condition assessment of the system for that work. And then also then we -- they decided to do some financing for the water system, the refinancing of some of the bonds. So we did a similar report for the water system as well.

Q All right. Can you bring up Exhibit 637, Page 249?

MR. HAMILTON: And again, Your Honor, this is already in evidence based on Ms. McCormick's testimony.

Q And if you could go to the -- the third page of this. There you go. What is this document, Mr. Kaunelis?

A This is the document that we just referenced. This is -- was prepared on the water system as part of the financing. So it was an evaluation of the water system for the -- for the official statement.

Q And what did you do to prepare this water system evaluation?

A We did a site visit to a number of the water treatment plants, booster stations, and reservoirs in the system to get a firsthand look at the facilities and to evaluate them.

Q All right. And could we go to Page 283 of this document? And if you could blow up the paragraph above the -- above the table.

What changed here in the -- in the projects that are -- that are discussed here from what was in your original ten year CIP the year before?

A The -- since the -- and when we did the ten year CIP at that point the water master plan update was just a few months into the project. As part of this work in -- in July of this year, they had already published a first phase report and were part way into their second phase work.

Their -- all their work is going to be wrapped up in about I think April of next year. So they have a lot of their work completed at this point.

Q All right. Can you blow up the bottom table on this chart -- or on this page? What does this table show, Mr. Kaunelis?

A This shows the five year -- the additions to the five year capital improvement program. So for example, previously the -- you would not have seen these projects in the five year capital improvement program.

Q All right. Were all of the -- all of the projects here are now within the five year CIP of the department, is that correct?

A Yes. It's not been officially adopted yet, but it's in

their draft that I believe that they're going to be presenting to the customers and to the board.

Q Okay. And are all these projects already included in the ten year CIP you did last year?

A Yes.

Q Okay. Are they within the first five years of your ten year CIP?

A Some of them were, some of them were in the later portions.

Q And now they've all been moved to the first five years?

A That's correct.

Q Okay. And then if we could go to the -- the next page of this exhibit. Are these your opinions with respect to the quality of water service that's provided by the department to its customers?

A That is correct.

Q And if you look at number 2, are the projects that are current -- that the department is current -- currently in the department's five year CIP, are those adequate to enable the department to provide an adequate level of water service going forward for the next five years?

A Yes, although I would characterize the -- the -- that table that we were looking at, I would suggest that they add those projects into the next version of the five year CIP.

Q All right. And your opinions here are predicated on the

assumption that those projects are included in the five year plan, is that right?
A That is correct.
Q Okay. All right. Can we go to Exhibit 636? And Page 255. And if you go two -- two pages in. There you go. What is this document?
A This is the similar report for the sewerage system.
Q And if we go to Page 283. And if we blow up the -- the table. What does this reflect, Mr. Kaunelis?
A This -- these are the projects that are -- major projects that are on their current five year capital improvement program.
Q Now were these projects included somewhere in your ten year CIP you did last year?
A Yes, they were.
Q Okay. And what if anything has changed with respect to the sewer system on your ten year CIP from last year?
A Actually very little has changed on the sewer system. The -- the -- there are no new major studies ongoing and everything seems to confirm the -- the past evaluations of the things that need to be done.
Q All right. If we go to Page 285. And if we can blow up the first five opinions that would be great. Are these the opinions you set forth in your report, Mr. Kaunelis?
A Yes.

Q All right. Can you describe for the Court -- or tell the Court a little bit about what you're reporting here in your first opinion about the three minor, relatively minor violations?

A Yes. The -- well, let me start a little bit over the -- the previous. Of course we -- we all know that the department has had problems in the past with getting consistent water quality treatment at the waste water treatment plant.

And they had extensive violations at different times because of that. Since 2012, their performance has actually been quite good. And they actually have had relatively high -- high quality effluent occurring.

Now even with the -- the good quality effluent there have been minor accedences. So for example, and I don't recall it's -- it's specified in the report, I believe. But there were -- there were times where they slightly exceeded a particular parameter.

Like, for example, I think there was one where there was a metal -- one of the metal limits was exceeded a little bit one time. But a relatively small percentage accedence.

Which is something that can occasionally happen, but it's not an -- it's an indication that there's no major problem at the -- major ongoing problem at the waste water treatment plant. So that's why we considered these are -- are minor and they are not chronic. They are not something that you're

seeing the same violation month after month after month.
Q All right. Let me ask you about your third opinion there. Do the -- are the projects set forth for the sewer system for the next five years in this document, are they sufficient to enable the department to provide an adequate level of sewer service to its customers for the next five years?
A Yes.
Q Mr. Kaunelis, do you have any reason to believe that there is a material risk that there will be a -- a major system wide failure in the infrastructure of -- of Detroit's water and sewer system that would prevent it from providing adequate levels of service to its customers for the foreseeable future?
A No.
MR. HAMILTON: I have no further questions, Your Honor.
THE COURT: Any cross examination?
MR. SOTO: No, Your Honor.
THE COURT: Just a couple of -- of questions regarding some terminology that you used. I assume there are a range of problems that either transmission lines or distribution lines experience, right?
A Yes.
THE COURT: Can -- can you describe that range for

me?

A Sure. The most -- the typical for your piping systems are -- are occasions where the -- the piping network for whatever reason you get a break in the piping network. And then you have to do a repair, a spot repair on that piping system.

So it's a -- it's a structural -- structural failure at a point is -- is typical. And that can occur for a number of reasons. For example, one example I gave if -- if the pipe -- a metal pipe in a corrosive soil, the soil is actually going to eat away at the metal and the metal is actually -- you're going to -- over time you'll see the thickness of the pipe gets smaller.

And eventually if you leave that for too long you'll eventually lose the pipe. So some of those structural kind of conditions.

Another one where there's a structural for example when you get a sudden change in pressure typically known as water hammer. So you'll get a very sharp change in pressure that occurs in the system.

So if a -- if a pump comes on very suddenly, or goes off very suddenly, you'll actually see a pressure wave occur through the system that's much higher than the normal pressures and that can break a pipe.

Other types of things can happen. Another class of -- of

problems is on interior of the pipe. You get deterioration, what's known as tuberculation.

Over time you'll see the metal on the inside of the pipe will actually start to close in. You'll -- you'll lose a little bit of metal and along with some of the other minerals in the water, it will create a deposit so when you look on the interior of a pipe it's actually much smaller diameter than what you started with. So that sort of a tuberculation is another type of problem that can occur in the pipe.

THE COURT: Okay. And so those failures result in these leaks that you talked about and then you -- and then you discovered those by leak detection systems?

A Yes, that is correct.

THE COURT: And what does that involve?

A Leak detection, there is a number of ways to do it. One of the common ways is to -- you actually through sound if you actually have some very sensitive listening equipment that you attach to the pipe, you can actually hear the flow of water. So if you -- if there is a flow of water at a time or at a location where you don't expect it, you can actually determine that there is a leak there particularly large leaks.

And there is some further testing that you can do to determine the location of it. And then you would do a dig up and -- and repair whatever the problem is at that location.

THE COURT: So is there a recognized concept for

water systems of a useful life of a -- of a transmission line or a distribution line?

A There are general guidelines that people use and in the United States you hear numbers. Typically that range from say 50 years to somewhat over 100 years that are typically used in -- in general thoughts about what's the useful life.

I will point out that in -- in other parts of the world like for example in Europe, you -- there are -- are many pieces of their infrastructure that have been around for much longer than that and are still providing good useful life.

So they are -- are good general indicators that you certainly want to consider when you're doing your planning. But for example you don't want to use age all on its own. For --

THE COURT: That was really my question.

A Yeah, you don't want to use age.

THE COURT: So useful life is not -- in the profession, or in the industry, understood to mean the time at which the -- the pipe should be replaced?

A Correct.

THE COURT: Okay. That's all, sir. Thank you.

A Thank you.

(WITNESS VYTO KAUNELIS WAS EXCUSED AT 9:18 A.M.)

MR. CULLEN: Good morning, Your Honor. Thomas Cullen of Jones, Day representing the city. At this point the

city would like to call its next witness, Mr. Kenneth Buckfire.

THE COURT: Okay.

MR. CULLEN: And we have some books that we're going to --

THE COURT: Okay. Please raise your right hand.

(WITNESS KENNETH BUCKFIRE WAS SWORN)

THE COURT: Please sit down. While it's on my mind, may I ask whether the issue of the admissibility of the exhibits that only Syncora had objected to was worked out among counsel?

MR. SOTO: Your Honor, we've gone through all but about 50 and we expect to be able to be done with that analysis today.

THE COURT: Okay. Then -- then we'll defer it. Go ahead, sir.

MR. CULLEN: Okay.

DIRECT EXAMINATION

BY MR. CULLEN:

Q Good morning, Mr. Buckfire.

A Good morning.

Q What's your full name and address, sir?

A Kenneth Allen Buckfire.

Q And address?

A 1175 Park Avenue, New York, New York.

Q Where do you work?
A Miller, Buckfire and Company.
Q Could you describe for the Court the nature of Miller, Buckfire's business?
A Miller, Buckfire is an investment bank specializing in restructuring advice to cities, municipalities, and governments, and corporations.
Q And when you say -- what -- what kind of investment advice?
A We specialize in working with entities, corporations, and governments that have difficulty accessing normal capital markets. Their ability to survive and operate in the ordinary course is in question, therefore that requires a specialized set of services to allow them to negotiate with creditors. We raise capital when necessary, sell assets when necessary to put the entity back on a solid financial footing.
Q Okay. And in the range of advice, could you give us an idea of the range of advice or services you offer to these financially distressed companies?
A Well, the services we provide to governments and corporations that are financially stressed include always an extensive diagnosis and due diligence of the operating or business plans depending on what the entity is.

The goal of that is to determine what the balance sheet should be to support the operations of the government or the

corporation so that it can operate without undue financial pressure while delivering the appropriate services or goods and services to its customers.

Q Does raising capital get involved in this?

A In almost every situation.

Q Is there any need to evaluate the debt capacity of these companies?

A It's an essential condition to determining how much capital could be raised and on what terms.

Q Could you explain the concept of debt capacity for the Court, please?

A Debt capacity is a concept that bankers employ to determine what the carrying capacity of the entity is in terms of being able to borrow money and repay it without undue pressure or undue risk of going into default or an inability to deliver services or operate in the ordinary course.

Q Is Miller, Buckfire occasionally tasked with assessing or overseeing asset sales or divestitures?

A Very frequently.

Q Has Miller, Buckfire received any recognition for the quality of the work it has performed for its clients?

A Yes. Over our nearly 20 year history we have received numerous industry awards including for most recently General Growth Properties which is a $28,000,000,000 bankruptcy a few years ago. It was the mega restructuring of the year.

Earlier than that we received a similar award for the mega energy company restructuring of the year for Calabrian Corporation. That was about $22,000,000,000. And we have received numerous awards for smaller situations in the course of our history.

Q Is Miller, Buckfire regulated?

A We are.

Q In what ways?

A We are regulated both by a FINRA and the SEC and we're also an IMRA advisor which is a new term they created recently for investment banks that provide fiduciary advice to municipalities. And we are an IMRA advisor as well.

Q One -- one second. Are both the individuals and the firm itself regulated?

A Yes, we are.

Q Okay. And for instance under FINRA do you hold any particular certifications?

A Yes. I told three, series 7, series 24, and also series 63.

Q And what are they?

A They are requirements of FINRA to anybody dealing with securities to make sure you comply with the rules and regulations that allow you to effectively discuss, offer, and transact with securities in the marketplace.

Series 7 is what's called the registerted rep

authorization, similar to what a stockbroker would have to have to deal with the public.

Series 24 is a much more serious standard where a supervisor has to satisfy the requirements. You can supervise registered representatives. And I hold those.

Q Okay. And 63?

A That's a New York State requirement similar to series 7.

Q All right. You mentioned something called IMRA. Would you tell me what that is?

A It's the -- known as the IMRA -- we are an independent municipal registered advisor pursuant to the Securities and Exchange Commission requirements. They require that registration be held by firms that advise municipalities.

Every municipality normally requires an advisor to provide fiduciary advice when issuing securities as opposed to the underwriter. So in this situation, Barclay is theoretically the underwriter of the securities, but we are advising Detroit as its IMRA.

Q And under this regulation, you are precluded from being an underwriter of any of -- any of the securities on which you advise a city, correct?

A Yes.

Q Okay. You say a fiduciary role with respect to the municipality. What does that entail?

A We are charged with the task of advising our client as a

municipality as to how to select the best financing available to it from underwriters who are because they're providing underwriters they're acting on their own account. They are not at arm's length from the city.

Q Tell me about Miller, Buckfire's role for the city in connection with this case in general terms.

A We are tasked with being the investment banker to the city which encompasses a wide range of responsibilities including due diagnostic analysis of the debt capacity of the city, potential value of assets, negotiating with creditors, raising capital limits when -- when necessary.

Q Okay. Did the engagement with the city have phases?

A Yes. Our first engagement with the City of Detroit was in the summer of 2012 when we were hired to do a 60 day financial evaluation of the city's financial condition.

Q And what was the -- what was the goal of that effort?

A That was designed to provide to the -- the state and to the city leaders an independent assessment of its financial prospects, conditions, and ability to operate in the ordinary course.

Q And then were you engaged again in January of 19 -- January of 2013?

A Yes, we were.

Q And what was that role?

A At that point we were hired as the investment banker by

the city to begin to provide general strategic financial advice about how to address its overwhelming financial problems, and help design a strategy along with other professionals and the city leadership to address the pressing liquidity concerns of the city and recommend a strategy to put the city on a solid financial footing.

Q Who was the leader of this Miller, Buckfire engagement?

A I -- I was.

Q How big was your team?

A At our peak we had approximately 15 bankers working on various aspects of this engagement.

Q How long have you been providing investment banking services to clients?

A Since 1987.

Q And particularly in the field of restructuring finance?

A Since 1987.

MR. CULLEN: All right. Let us take a look at what we've marked as City Exhibit 768 which is a copy of Mr. Buckfire's C.V. which has been produced in various documents here. We thought it would just be simpler to provide it separately, Your Honor.

Q Is this your C.V.?

A Yes, it is.

(City's Exhibit 768 was identified)

Q Does it remain true and correct to the best of your -- to

the best of your memory and knowledge?

A Yes.

MR. CULLEN: All right. I'd like to offer 768 into evidence if I could, please.

THE COURT: Any objections?

MR. SOTO: No, Your Honor.

Q Have there been any changes since you've previously --

THE COURT: Excuse me.

Q -- any material changes --

THE COURT: Excuse me. It is admitted.

(City's Exhibit 768 was admitted)

MR. CULLEN: I know I shouldn't hang around with Stewart.

Q Have there been any material changes in your C.V. since the time you prepared it?

A I'm older.

THE COURT: Is that a material change, sir?

A It certainly feels that way.

MR. CULLEN: With that, Your Honor, I think I'll dispense with going through that because the Court is familiar with the aspects of -- of that.

Q Do you participate -- we can take it down now. Do you participate in any professional associations?

A I do.

Q What are they?

A I'm a member of the American Bankruptcy Institute, the firm is a member of the Turnaround Management Association, and I serve on one of the committees of the existing Bankruptcy Reform Commission.

Q Can you tell me what those committees are?

A Well, I'm on the plan process committee.

Q Have you ever testified in Federal Court?

A Yes.

Q Have you testified in Bankruptcy Court?

A Yes.

Q How many times?

A More than 20.

Q Okay. Have you been accepted as an expert to testify about restructuring finance?

A Yes.

Q And were you indeed qualified as an expert about restructuring finance in the -- in an earlier phase of this proceeding?

A Yes.

Q Do you have experience analyzing a distressed entity's liquidity needs?

A Yes.

Q Could you characterize the depth or scope of that experience?

A I've done that work for my entire professional career.

Q And do you have experience designing securities? Does designing securities mean something to you?
A Yes.
Q What does it mean?
A Well, it means designing the securities that a borrower would offer to either its creditors as consideration as part of a plan of reorganization, or to attract new capital from the market, either before or after a bankruptcy case.
Q Could you describe the elements involved in designing a security?
A Well, it's not a simplistic task. It's very iterative because we have to consider a number of factors, the most important of which is the inherent debt capacity of the organization.
And that we've already talked about means how much debt can the organization reasonably borrow and have a very high probability of being able to repay.
Q Okay. And what about the particular features of the security to be designed?
A Well, all those features would be dependent upon how much debt capacity you have. You can't exceed the debt capacity which tells you how much principal amount you can issue. That's the most important factor.
But then you have to design the principal amount that you're offering to borrow or effectively to repay and you have

to consider the coupon interest rate, the term of the debt, amortization features, in other words how fast you pay back the debt over time.

Whatever package of financial covenants are required to allow the lender to lend back to the borrower. And the level of security and seniority of the underlying instrument.

Q And what are you trying to achieve for a client when you design a security?

A Well, we're always focusing on primarily three things first. Designing a security to allow it to borrow at the lowest possible cost.

Second, to impose no risk on the borrower that it will suffer a default or other financial event prior to the maturity of the debt. Which means we want to make sure the security itself doesn't have features that would trigger a default or an event even if the city or the borrower has the ability to repay. Those are all very important.

Q What about the -- does the long term balance sheet of the issuer play into this in any way?

A Well, that's the predicate of all of this. It all comes back to debt capacity. You can't just look at the debt capacity as of the date you issue the securities, you have to look at the borrower's long term ability to repay. And that requires a very careful understanding of the underlying business prospects and operations of the borrower.

Q Are there aspects of security design that you would identify as unfavorable for a client, or that would cause you heightened concern?

A Well, there are always certain features that lenders try to get and we always encourage our clients to resist. And the most important of which is too rapid amortization.

Clearly a borrower that's come through a restructuring frankly there is -- in the restructuring is they don't have complete control over their operations and their ability to project forward. That means you don't want to put undo stress to repay too early whatever borrowings you are taking into account as part of the exit, that's number one. So too rapid amortization, too near maturity is always a problem.

Secondly, the covenants that the -- the lenders "require" to make sure that the borrower has adequate capacity to repay. Those can be often demanded to be too tight too onerous.

Thirdly, we don't want to create a security that does not allow the borrower to borrow more if it turns out its advantageous to do so. And one of the common issues you run into there is where a lender will say, well, if you want to borrow more money, you have to pay me first. And that would be a very onerous condition even if they have adequate debt capacity to repay.

Q Okay. You've described your practice area as restructuring finance. Can you explain to the Court how that

differs if it does from more general finance activities?

A Well, it's entirely different. Bankers who work with companies that are well run which have stable operations, you know, really don't have to spend much time on due diligence of the company itself. They can rely with much greater confidence on the company's projections and statements that in fact it will be a going concern going forward because it's a well run company.

The kind of clients that we have almost never have that level of confidence because the reason they're in restructuring or bankruptcy is because their business plan, or their operating plan if it's the government, no longer works. And that requires us to spend a great deal of time doing a extensive due diligence and diagnostic analysis of the real operations of the corporation or the government to determine well, what does it really need to spend to provide services or produce goods and services as the case may be.

And then once you've done that analysis, that then tells you how much debt capacity you have. And then at the very end of that process, we will figure out how to get from the balance they happen to have to the one that they should have. Which is the execution phase of our engagement.

Q Now with respect to the difference between normal -- normal financing and restructuring financing. In the restructuring case, are the normal capital markets available

to the borrower?

A Typically not.

Q No?

A Typically no.

Q Now with respect to a distressed borrower, does this process of looking for financing outside of the normal course, require an intention on your part to the prospective borrower's balance sheet or business plan?

A Yes.

Q Could you describe that, please?

A Well, the company in restructuring or in government restructuring has typically lost the confidence of normal market participants who no longer necessarily believe that the civic leadership or corporate leadership has control or really can adequately project its business.

And therefore its incumbent upon Miller, Buckfire or similarly situated restructuring investment bank to effectively re-underwrite the credit, to re-explain the government's operations, balance sheet, or a corporation's balance sheet to the market and basically re-introduce the credit to a new group of investors who are more used to taking a risk on a situation which is in flux and one in which the borrower has demonstrated over several years that they in fact can manage the situation responsibly and can actually have confidence in their projections.

Q And do the relationships that you developed over time in the restructuring arena with lenders who operate in that arena, is that in any way important to the way you deal with this problem?
A It's crucial.
Q Explain that, please.
A Well, the kinds of lenders or investors who provide financing to our kinds of clients are used to dealing with us. They have gotten to know us over 20 years, they know this is the kind of work we do.
And when we bring them a borrower who needs capital, they understand that we've done our homework, that in fact we have exhaustively studied the operations, and we can then represent to them that on a restructured basis, assuming that the restructuring is executed, their investment will be safe and they will earn an appropriate rate of return.
Q You've described with respect to this function a diagnostic process, or diagnostic approach. Did I hear that correctly, sir?
A Yes.
Q Did you apply that approach with respect to the City of Detroit?
A We did.
Q Could you describe that for me, please?
A Well, immediately after being hired by the city in early

January of 2013, we recommended the city expand the role of Ernst & Young which had already been providing much more limited services to the city to -- to help us really understand the cash flows of the city, understand where the money was being spent, to really help design a long term set of projections that we could then use to determine what the debt capacity of the city was.

At the same time the city on our advice, hired Conway, MacKenzie to do a reinvestment analysis given the lack of service solvency in the city. It was clear to all of us that the city needed to re-invest in appropriate areas of its activities to allow at a minimum the tax base and revenues to be stabilized while encouraging new people to come to the city and new businesses to locate here.

We had no ability to do that, that's not Miller, Buckfire's expertise. And so we began working with Ernst & Young and Conway beginning in January of last year really in a six month effort to determine two things.

One, what were the long term projections of revenues and expense of the city. And secondly, what would the city need to spend to restore service solvency. And at the end of that process which I recollect, we finally finished our initial review in early May of last year.

That allows us determine how much cash would you have left with then forms our basis for concluding how much debt

capacity the city would have.

Q So what is the relationship between cash balance and debt capacity?

A Well, if you're not generating cash you can't pay back your debt. So once you've taken care of your service needs whatever is left over from tax revenues can be used to satisfy your obligations.

MR. CULLEN: Your Honor, if I could put up on the screen Exhibit 734, the 40 year projections that were admitted yesterday.

Q And if I could direct your attention, Mr. Buckfire, to Page 8 of 14, I believe. And if you could pull up just the ending cash balance of that. Right there. Just that bottom is fine. And can you -- can you read that, sir?

A I can.

Q Okay. And you're -- you're familiar with this document and have worked with it?

A I have.

Q Can you tell me what impact if any that ending cash balance as reflected in Exhibit 734 has on issues of the city's debt capacity?

A Well, this is a very complicated balance sheet and clearly as you're trying to determine the debt capacity of the city, you need to look at the end result after paying back all of our creditors and dealing with service insolvency, how do

you know you've not over spent and you haven't over levered in terms of your operations.

The cash line is a very good proxy for whether or not we have done that, whether we have reached our available debt capacity and we have also funded our requirements for reinvestment. So given that the cash line is around $80,000,000 over the ten year period, I am highly confident that we have not exceeded our debt capacity because if we did, our cash number would be going down.

At the same time if our cash number was going up, that would mean that we actually had more debt capacity or differently we're spending too little on reinvestment relative to our tax base. So I'm very confident that we have optimized from a debt capacity point of view, you know, how much we can actually borrow and pay out.

Q Okay.

A And that's what this indicates.

THE COURT: One second, please.

MR. CULLEN: Sure.

THE COURT: Can you put that back up for me? And this projection takes into account that debt repayment?

A Yes, it does.

THE COURT: And this is the debt repayment on the borrowing that the city proposes, the exit financing?

A That's correct.

THE COURT: And just to close the loop on this, where do -- where does one see that on here?

A Well, it's on the -- it's a little bit above this bottom line, Your Honor. If you go to uses you'll see a section that says retiree payments which are the ongoing contributions to the pension funds.

THE COURT: Yes.

A And secondly, you see note and cash payments which are all the various debt securities that we propose to issue pursuant to the plan.

THE COURT: Well, but do those include the exit financing?

A I don't see that here.

THE COURT: Can you help us out here, counsel?

MR. CULLEN: I believe that -- give me one moment, Your Honor.

THE COURT: Okay. Take your time because I want to -- I want to pin this down.

MR. CULLEN: Yeah, this -- this is the ten year period, Your Honor. If we could move forward to the 40 year period.

THE COURT: Okay.

MS. O'GORMAN: This is the 40 year.

MR. CULLEN: That's the 40? I mean --

A This schedule only runs out to 2024 though, so --

MR. CULLEN: Yeah.
A This page doesn't pick up the exit financing.
Q The exit financing picks up in the out years?
A Primarily, yes. But it --
Q Let's look at the next page. No.
MR. CULLEN: I will find this for you on the morning break, Your Honor, and we'll -- we'll get it straight, okay?
THE COURT: I think actually while we're focused on it, I'm going to ask you to take a minute and discuss among yourselves and -- and get this figured out and then we'll continue. So let me just sit here while you do that.
MR. CULLEN: Okay. Thank you. 714, please. No, not -- Exhibit 714.
Q Now if I could direct your attention to two lines on that exhibit. One under revenues, QOL/exit financing protocols. And under -- under expenditures down below QOL/exit financing interest payments. Do you see that, sir?
A I do.
Q And that's over the ten year period that reflects -- tell me what that reflects with respect to the account it goes in the proceeds and in the payment line.
A Well, on the revenue line it reflects the borrowings anticipated by the exit financing commitment which is I believe now $325,000,000. And that's why in 2015 which is a fiscal year we show it's a lower number because I don't

believe that these projections are updated as of the decisions last night to increase the facility to three twenty-five. But then --

THE COURT: Wait, hold on. Break that -- break that down into baby steps for me.

A I'm sorry, Your Honor. The original request that we made in the market was for a $275,000,000 exit financing which would have allowed the city to repay the balance of the swap obligation, the quality of life loan, a hundred and twenty, and the balance would go into a debt reserve fund, fees of the offering and cash for the city.

But we also negotiated as part of our settlement process, to repay the LTGO $55,000,000 in cash. And in order to do that we've asked the city council and they've approved for permission to upsize the exit financing to $325,000,000. And to take out the LTGO requirements. And these projections I think were filed before that decision was made and approved by city council, the MFA and the ELB.

THE COURT: So are there updated projections with that change in it to show me how that works?

A I haven't seen them, but I'm sure they're available.

THE COURT: Do you know anything about this?

MR. CULLEN: Yes. I think that E & Y has updated those projections, Your Honor.

THE COURT: Are they in evidence?

MR. CULLEN: I believe the most recent updates of the projections are in evidence, but I will check with that and if there's an update required based upon the city council vote, to provide it to the Court.

THE COURT: Have you seen the update?

A No, I haven't.

THE COURT: Well, all right. This is an open issue that --

MR. CULLEN: We'll have to plug up.

THE COURT: You'll have to address for me whenever you're ready.

MR. CULLEN: Yes. Thank you, Your Honor.

Q What is -- if you could put that down, please, and put up the --

A VOICE: Page 6.

Q Page 6. Could you review that -- that page, Mr. Buckfire and I would direct your attention particularly to the total secured debt service, including quality of life exit financing. Do you see that, sir?

A I do.

Q What does that tell us about these costs as of the previous version of the exit financing?

A Well, the -- the incremental change would only be $50,000,000 over these numbers. They'd be increase -- I don't believe this takes into account the increased size of the exit

financing which was two seventy-five and it should be three twenty-five.

But that's not really material relative to the amount of debt the city will have borrowed. And the total borrowings here are about 2.3 billion over the ten year period. It's -- it's a relatively small amount.

Q But I will --

THE COURT: A $1,000,000 sounds like a lot of money to me.

A Well, but from a debt capacity point of view, Your Honor, it's only 2% of the total debt.

THE COURT: All right. You don't object if I want to see it?

A No, of course not.

THE COURT: Thank you.

A But if I could just make a final point. The --

THE COURT: Yes.

A It's also important to think about the net debt position of the city because that incremental borrowing does not impact the city's net cash position upon emerging from bankruptcy if the plan is approved. And that's a very important consideration. The city will still realize from the financing 75,000,000 to $80,000,000 to support its RI initiatives.

THE COURT: Fair enough. But I've got -- I've got to look at the long term feasibility of this, right?

A I do understand that.

THE COURT: Okay.

Q What has Miller, Buckfire done in addition to what you've talked about, or -- to prepare the city to re-enter the capital markets?

A Well, we began to prepare the city to re-enter the capital markets and be what I would call a normal borrower when we began the process of securing post-petition financing.

It's important to note that the city had really not been in the markets previously to last year since 2005. Not counting the small financing they did in 2011 as a representative transaction because that was relatively small and was supported by state revenues. The city's credit was never an issue in the marketplace.

So we knew in order to prepare the city to re-enter the markets after bankruptcy, that we would have to re-explain the city, its prospects, and its operations to the capital markets to start to build a base of potential lenders and investors who would be willing to provide credit to the city in the ordinary course. We began that process last year during the post-petition financing process.

MR. CULLEN: At -- at this point I'd like to offer Mr. Buckfire as an expert witness in the area of restructuring finance.

THE COURT: Any objections?

MR. SOTO: No objection, Your Honor.

THE COURT: You may proceed, sir.

Q Mr. Buckfire, did you prepare a -- an expert report in this matter?

A I did.

Q If you could take a look at the front page of City Exhibit 462, the Buckfire expert report. Is that -- is this that report?

A It is.

(City's Exhibit 462 was identified)

Q And at some point did you prepare a supplemental expert report? Could we see at this point city Exhibit 744, the supplemental expert report?

A I did.

(City's Exhibit 744 was identified)

Q And this is it?

A It is.

Q And these reports taken together set forth the opinions that you are currently offering in connection with the city's efforts to confirm its plan of adjustment?

A Yes.

Q And in the first report you offered an opinion with respect to the appropriate discount rate to estimate recoveries for Classes 7, 9, 12, 13, and 14, is that correct?

A Yes.

Q If we could look at Exhibit 769, Page 2. And just blow up the unsecured claims portion. Are these -- are these as numbered on the left the classes for which you have offered the appropriate discount rate?

A Yes.

Q Then again 7, 9, 12, 13, and 14 limited tax general obligation bond claims, COP claims, Downtown Development Authority claims, and other unsecured claims, is that correct?

A Yes.

Q Okay. And have you also offered an opinion with respect to the city's ability to access capital markets?

A Yes.

Q Did -- I'm going to say it this way. What happened, Mr. Buckfire, between the time of your first report and your supplemental expert report that caused you to file a supplemental expert report?

A Well, a number of transactions were effective -- were successfully executed. First, we advised the city with respect to its tender exchange on the DWSD bonds which means those bonds are now unimpaired. And that allowed the city to borrow effectively at a lower interest rate on DWSD that had projected originally in the plan.

Secondly, we were able to secure and recommend an exit financing commitment which is an important factor that was not in evidence in my original report. Those are the two most

important things.

Q And have you also decided to excise another portion of your initial report?

A Yes. I'm no longer rendering an opinion on best interest of creditors.

MR. CULLEN: So, Your Honor, with -- at this point for demonstrative purposes, as we've done before in this proceeding, I'd like to offer City Exhibit 462, the initial report, except for Paragraph 7 and 17 which were excluded by the Court in limine on the best interest inquiry. And Paragraphs 11 and 12, re-market interest rates for impaired bonds under prior versions of POA which are no longer relevant.

THE COURT: Any objection to that?

MR. SOTO: I'm sorry, which of the paragraphs that are excised?

MR. CULLEN: 7 and 17, and 11 and 12.

MR. SOTO: Your Honor, if I understood your prior ruling, I would -- I think it would be 7, 8, and 9 which are all under the heading of plan treatment upon dismissal which are best interest.

MR. CULLEN: That's fine.

MR. SOTO: With that no objection if used for demonstrative purposes.

THE COURT: All right. For that purpose it is

admitted.

(City's Exhibit 462 was admitted)

MR. CULLEN: And I would also like to offer City Exhibit 744, which supplements the previous report with respect to the discount rate and -- and -- and -- and includes the discount rate report by reference. 744 is the new opinion on access to capital supplemented by the exit financing experience and includes the discount rate analysis by reference.

THE COURT: Any objections?

MR. SOTO: No, Your Honor.

THE COURT: All right. It is admitted.

(City's Exhibit 744 was admitted)

MR. CULLEN: Okay.

Q Mr. Buckfire, what is the opinion with respect to the appropriateness of the interest rate for the identified classes that you have offered in your expert report?

A Well, in my opinion the -- the discount rate is a reasonable rate for the city.

Q What -- in the context of the treatment of these classes' claims, what is the function of a discount rate?

A It's a proxy for the cost the city should expect to pay to borrow new capital in the market when the expectation is that the buyers of that new debt will hold the paper to maturity.

Q And how is the process of determining an appropriate discount rate conducted from the municipality as compared to a -- a commercial buyer?

A Well, it's quite different. First of all, a city or a government has the -- you can make the assumption normally of perpetual life. For a corporation that is not normally the assumption made by the capital markets, they're always assessing the risk of business plan failure or management errors. But in a case of a municipality, that is not the assumption, therefore the investment horizon is typically assumed to be the maturity of the debt or beyond.

And the primary risk that one assesses, is the ability of the city or the borrower in the case of another government, to refinance and repay existing debt. That's the presumption that is often employed in the municipal finance market.

Q And is this something called the perpetual life assumption?

A Yes.

Q Okay. Why is the discount rate in that connection not -- simply not the weighted average cost of capital?

A Well, it's -- it's totally different. First of all, in a corporate situation the cost of financing a company is assumed to be the weighted average cost to capital and that's a function of the cost of equity and the cost of debt.

For a corporation to issue debt and take advantage of the

so-called tax shield is an important function that obviously a municipality overwhelmingly will issue tax exempt debt. So that doesn't happen.

Secondly, there's no concept of equity for a government. So the implicit cost of financing for a government entity is almost always assumed to be the long term taxes and borrowing costs.

Q In your experience are there any generally accepted methods in your industry for determining an appropriate discount rate?

A Well, it's more -- it's a art or science. One can look at available information to guide a judgment on what the rates should be. And normally one would look at what's similarly situated borrowers are paying for capital, over a range of maturities and durations.

One also look at, you know, market tests. For example recent financing is done by similarly situated borrowers to indicate what the current conditions are in the market today. And then it becomes more difficult because relatively few borrowers are so identical to others that you can simply look at one borrower and say well, that's what I should pay for capital, especially in a situation like Detroit which is very unique.

So one can look at comparable market indexes and comparable transactions but then you have to apply judgment

based on the changing conditions applying in this situation.

Q What did you consider in assessing the appropriateness of 5% as the discount rate for these classes?

A Well, we looked at as much market information as we could. We looked at the published MMA curves. They're a part of my expert report. That was a very important indicator.

THE COURT: Published what curves?

A The MMA curve. It's the Municipal Market Access curve. It's where single A and -- of debt of rate of borrowers. It's publicly reported on the Moonberg data service.

And that's a very important benchmark to understand. If you're a "single A" or better rated borrower what can you expect to pay. And it shows the cost over a range of maturities out to 30 years.

Now that's very important because of course when you're trying to analyze he cost of borrowing, you need to take into account for how long you're borrowing. Because the shorter you borrow the lower the cost is.

But then it imposes liquidity pressures on the borrower. Obviously the tension obviously is, you want to borrow as long as possible then you have to pay too much for it. So judging where you want to be on that curve is an important element of judgment as well. And those curves are very important for that reason.

Q What role if any did the city's projection play in the

appropriateness of discount rate?

A Well, they're crucial because in order to re-underwrite the city's credit, one of the most important factors has to be the city's ability to repay the debt being issued pursuant to the plan.

So therefore the fact that the plan reduces total liabilities from 10,000,000,000 to 3,000,000,000 on an unsecured basis, Your Honor. I'm not talking about the water debt.

That we have effectively eliminated the -- the uncertainties of the OPEB and pension costs so we have effectively reduced and now have certainty around our debt service obligations. And not only that but the city's budget assumes that the re-investment program will allow it to have stable revenues over the -- at least the next ten years.

All should give the markets a great deal of confidence that the borrowings were being requested by the city will get repaid in the ordinary course. So the projections are actually the most important element to determine whether 5% is a reasonable rate and I'd just also note that 5% is what bankers would call a point estimate.

That normally when advising the client on the cost of capital, it's a range. So I think for this purpose we should think about 5% as the midpoint of a range and that we would expect as the city goes forward, depending on market

conditions, it should be able to borrow around that range, that number. But it may not be exactly 5%.

Q Did you take into account the post-confirmation governance provisions for the city in -- in looking at this issue?

A We think that's another element of the credit post-bankruptcy that will give the market a lot of confidence that the city will be able to repay when due because clearly as a credit aspect, reducing liabilities from 10,000,000,000 to 3,000,000,000 giving far greater certainty to the city in terms of its remaining debt obligations and making sure there is another body overseeing the long term financial affairs of the city, especially with respect to collective bargaining agreements, future debt issuances and the like, is a crucial element to the credit story. We believe that will give the city the ability to access capital post-bankruptcy at the lowest possible cost.

Q Okay. If we could look at Page 24 of your expert report, 744. There we go. Could you tell us what this page represents, Mr. Buckfire?

A Yes. This is our analysis of what the balance sheet of the city will look like assuming the plan is confirmed.

Q And how did you put this analysis together?

A We based --

THE COURT: One second. Are -- are you still

pursuing the witness' testimony regarding the 5% discount rate?

MR. CULLEN: Yes.

THE COURT: Okay. I ask because at some point I need to have him explain to me in detail how he got to that number because I don't think I've heard that yet.

MR. CULLEN: Okay. All right. And we will, Your Honor. We haven't --

THE COURT: Okay.

Q Could you take a look at --

MR. CULLEN: This is one of the steps, actually.

THE COURT: Okay.

Q If you can take a look at that document. How -- how did you put it together?

A Well, this is a result of inspection of the pre-petition obligations of the City of Detroit. And then the resulting balance sheet after the restructuring proposed by this plan. And this is simply a mathematical analysis of where we begin and where we plan to end.

Q And if I could direct your attention to total obligations line. Could you explain that line to me and tell me what bearing, if any, it had on your consideration of the appropriateness of 5%?

A Well, prior to the bankruptcy the city had total obligations both on balance sheet and off balance sheet of

over $10,000,000,000 which is ten times the tax revenues of the city.

And that is why the city could not borrow in the ordinary course prior to the bankruptcy, it's too much debt. As a result of this plan of adjustment, if it's approved, the city will have eliminated 7.3 billion of that 10.4, leaving the city with only 3.1 billion of total obligations.

But most importantly, the annual cost of those -- of servicing those obligations over the next ten years will be -- have a high level of certainty. And that's really an important factor for the credit markets because as we believe will be shown by the exit financing process, a lender to the city post-bankruptcy will have a very high level of confidence that because there's no refinancing requirement during the first ten years or even later, its new borrowings get repaid by the city in the ordinary course.

And that is why the appropriate discount rate should be around 5%. And even that may prove to be too generous as the city's operations improve. But we can't bank on that today.

Your Honor, if I could just make a comment. I apologize. Seeing this page, I -- and we talked about the two seventy-five to three twenty-five. And I believe you were concerned that we were adding more debt to the city.

But I failed to bring this up before. Remember the three twenty-five is paying off the LTGO fifty-five.

THE COURT: Uh-huh.
A So in fact there's no change in the total debt of the city which shows me moving it from the LT line to the exit financing line.
THE COURT: Right. I got that.
Q And if I could direct your attention to the line of the pro forma here. With respect to three twenty-five, what does that reflect, sir?
A That is the proposed exit financing.
Q If we could highlight that, please. Three twenty-five down below. Just -- just above the twelve ninety-six.
A That's the exit financing number.
Q Thank you, Mr. Buckfire. Now you've -- you've mentioned a number of factors that played into your analysis of the appropriateness of 5%. And what I'd like to ask you to do is to tell me -- well, let's -- let's do it this way. You've mentioned revenue stability, correct?
A Yes.
Q You've mentioned decreased liabilities. You've mentioned stronger balance sheet. You've mentioned no immediate need for borrowing. You've mentioned re-investment, yes?
A Yes.
Q I think the Court's question is directed at you put all those things together --
A Uh-huh.

Q Why do they come out to 5 as opposed to 7 or 3?

A Well, again we're dealing with a municipal borrower. Let's take the counter factual of a 7 or 9% interest rate.

That is an extraordinarily high interest rate for a municipality because the only reason people would demand that rate in the market for lending for example Puerto Rico is an example of that is because there is substantial doubt about the ability of that entity to service its debts in the ordinary course.

That is not the situation here. Because we've addressed all those issues because of the bankruptcy. On the other hand, a 3% rate would indicate a very high quality borrower that has a relatively low level of debt relative to his tax revenues and has no, and most importantly, no real risk on the OPEB side or the pension side of unanticipated cash requirements that might damage the city's budget or force tax increases.

So looking between the two one can argue that it's certainly not a distress situation any longer because we've fixed those problems in the bankruptcy. But the city has not yet proven, I believe, and I've testified to this earlier, that it deserves to borrow at 3%. That would imply it is a strong single A or AA borrower.

Now certainly over the next ten years because the city has no reason to go back to the market to refinance existing

debt, it will have more than adequate time to demonstrate its credit worthiness and its ability to borrow at higher quality ratings, but there's immediate term to do that.

On the other hand one would argue that because there is uncertainty over tax revenues which I believe is the fundamental risk facing the city from a financial point of view, the market would require greater than a 3% rate.

And that's why the market curves that we attached to my initial expert report are very relevant here. Because it shows you directly what the market would require a highly rated municipal borrower to pay. And in every case we would show that it became less than 5%.

Q If I could direct your attention at -- at this point to precisely that. If we look at the initial report, Exhibit 462 and at Page 33.

First, could you tell me what this page represents and how it was derived?

A Well -- well, the caption actually defines it quite well. This is a publicly available curve on the Moonberg data service which represents as it states here, by surveying leading firms what they would effectively bid to own AAA geo bonds at differing maturities.

Q And is -- is this -- are these curves, is this amalgamation of market information something that is taken and relied upon in your business?

A Yes. It’s analogous to the treasury yield curve for corporate borrowers. It’s the benchmark from which all other credits are evaluated.

THE COURT: So the maturity is the X axis?

A Yes.

Q So it’s --

A And the yields are the Y.

Q The maturity is the X axis and -- and the rate is the Y axis, is that correct?

A Correct, that’s right.

Q Okay. Tell me how to read the different colors which I see as blue, red, green, and then orange. Do you see them the same way?

A I do.

Q Okay.

A Well, I’ll take the -- I’m sorry?

Q No, never mind. Go ahead.

A It’s quite colorful, I agree. The -- the orange line which is the MMA curve was run as of July 1, 2014 which was just prior to my submitting of my original report.

So it’s a little bit obsolete at this point. But it indicates -- and I’ll pick a particular maturity if you don’t mind and I’ll go from there.

Let’s look at the 15 year maturity. On the bottom you’ll see 15. And if you trend up to that you’ll see that at July

1, a AAA borrower on the GM market would be borrowing a little over 3%.

Now that indicates a significant rally from where they had been able to borrow seven months earlier which was the 12-12, the blue line.

And I'd also note although we didn't submit it here, that if you had re-run this curve as of yesterday, you would have seen a further decline in the curve because the markets have continued to rally.

Therefore when you look at 15 years to this discussion, today for AAA you could borrow at, you know, 3 1/4, something like that. So to say you're borrowing at 5% which is nearly 200 basis points more, is a very high premium to reflect the fact that the credit of Detroit, even though it's been substantially improved is still untested on a long term basis.

But on a prospective basis if one assumes that we're trying to test the ability of the city to borrow over the next ten years when there's no pressure to do so, 5% would seem to be an appropriate rate. Because again there's no question at this point that the city would be able to meet its new debt obligations when due which is not the case for a distressed borrower like Puerto Rico or even Guam.

We've eliminated that risk unless there's a precipitous decline in tax revenues. Further, if you go to 25 for example, which is another important factor, you'll see that

the orange line is around 4 1/4 which means that if you're borrowing 25 years and you're saying 5%, you're still above that. And maybe the risk premium is not quite that high.

But again the whole basis of the discount rate is to worry about where the city should be able to borrow if it's able to execute on its new operating plan. And because of the stability of revenues, the stability of the balance sheet, 5% would seem to be a very reasonable premium relative to where a AAA borrower would be able to borrow according to these curves.

THE COURT: What's the interest rate on the exit financing?

A Well, we don't know yet because remember we have a short term facility. We have a short term period where it's a private placement with Barclays but they -- we also have negotiated with them 150 day period in which they will then go out and do a public offering and because of the market flex and the base rate assumptions, we actually could end up borrowing more cheaply than these curves. But it also more cheaply --

THE COURT: All right. Could you repeat that last part?

A I'm sorry. The --

THE COURT: Wind up borrowing what?

A We have -- we've -- we have a -- the city has an

opportunity to actually price that debt at interest rates lower than would be indicated by these curves. And I can get into that later if you'd like.

But it's a very important factor and it helped me understand why a 5% long term discount rate here would be appropriate. I'd also note that other financings the city has done to date, albeit somewhat different in nature, have all tended to corroborate that 5% is a reasonable discount rate.

The post-petition financing as you recall, I hope, was done at 3 1/2%. It was four times over subscribed. The market took it. We had no market flex.

The tender offer for the water and sewer bonds, obviously revenue bonds, but they were priced inside of the conservative rates we had assumed as part of the plan. So the market, I believe, is now re-accepting Detroit's credit which now means that the question about rate is no longer a question of the viability of the city which if that was still an issue would mean we'd be paying very high rates. But rather, you know, will the city be able to effectively execute its plan which transmits into a yield premium over AAA.

Q In this demonstration, sir, is there one -- one line or one curve that you would identify as -- as most relevant to the city's experience or perspective or prospects?

A Well, it's really the orange line because that's the most recent. And that shows that the -- the base -- the base

yields that we would then contribute a premium to would be, you know, at a lower level than it was at the beginning.

Q Is it your opinion that the 5% discount rate for these classes is a conservative rate or a -- or an aggressive rate?

A I think it's conservative.

Q In reaching your opinion that the discount rate for each of these classes was appropriate, did you consider the fact that certain of these securities will be tax exempt and certain will not?

A We did.

Q What was the impact of that consideration on your assessment of the 5% rate?

A Well, it's not an easy question to answer because there's very little market evidence as to what the differences would be. But I think the best indication we have of what the spread difference might be is actually from the Barclays financing.

Because Barclays is committed as part of the $325,000,000 exit financing commitment, that the city will be able to borrow the taxes at market, 25 basis points more cheaply on the taxable portion. So I think from a market point of view, we've asked a important underwriter to price the difference between taxable and taxes on paper. And they came up with 25 basis points as the difference.

So in my judgment, the difference in rate attributable to

taxable Detroit paper versus tax on paper would tend to be around that number. That's just a market observation.

MR. CULLEN: Does the Court have questions?

THE COURT: Well, one for each of you. What is the -- what is the status of Court approval of this exit financing?

MR. CULLEN: What's going to happen just here -- here this morning, is that we're going to offer his opinion on this. His opinion on access to capital. And we will follow and supplement the opinion on access to capital with a detailed description of the status of all of those -- all of those factors.

The status, the status with the city council, the status with the public board, and the status with the -- the status with -- with the Court. As -- as Mr. --

THE COURT: Well, but technically -- but technically are you asking for approval of the exit financing as part of plan confirmation?

MR. CULLEN: As part of plan confirmation, yes, sir.

THE COURT: Thank you.

MR. CULLEN: Yes.

THE COURT: My question for you is, and maybe this will come out later, but it's on my mind this second. Why is any of the debt taxable?

A Much of the -- most of the exit financing is secured by

income tax revenues. But there's a portion that is -- and also it's not -- it's not being used for city reinvestment. And my understanding of the law is that unless you're borrowing money for reinvestment or capital improvement you're not allowed to make it tax exempt.

THE COURT: Uh-huh.

A And I can't give you a precise answer on that, but I believe that's the distinction that's drawn and allocated between taxable and tax exempt.

THE COURT: All right.

Q Let me ask you one more relatively simple minded question with respect to the discount rate analysis. You have several different classes. You have one discount rate. Why?

A Well, it's the same issue and in the same securities. There should be no different discount rate.

MR. CULLEN: That's all I have with respect to that topic, Your Honor. I was going to move on to access to capital.

THE COURT: Sure, all right.

Q Mr. Buckfire, do you have an opinion with respect to the city's ability to access the capital markets?

A I do.

Q And is that opinion included in both your original and your supplemental report?

A Yes.

Q What is the central or key assumption in those reports with respect to the city's access to capital markets?
A That assuming that the city successfully exits bankruptcy pursuant to the plan, it will be able to access capital in the ordinary course.
Q And with respect to the status of this proceeding, is there any key assumption relating to the ability to access capital markets?
A Well, there are three critical assumptions. First, that the liabilities of the city are reduced from 10,000,000,00 to $3,000,000,000. That has a dramatic impact on the city's ability to borrow again in the future.
Secondly, that it will not have a very high level of certainty in terms of the annual debt service requirements of its remaining $3,000,000,000.
And lastly, there will be a new governance mechanism put in place because of the oversight commission to give creditors confidence that there will be effective supervision over all other new contractual obligations in the city.
Q How many times have you been involved in obtaining financing on behalf of a city, country, or corporation, Mr. Buckfire?
A Dozens of times.
Q And that includes financings during bankruptcy proceedings?

A Yes.

Q Does it include exit financing?

A Yes.

Q Are there any particular factors which have a -- an impact on exit financing?

A Well, exit financing always requires privy to the market that in fact the borrower is not likely to go back into bankruptcy. That's always the core requirement of any new lender to a situation. And we have to prove that adequately in order to be able to raise capital at the lowest possible cost.

Q Okay. And is there an accepted method in your industry, an accepted set of procedures by which investment bankers and restructuring finance go out to the market to try and get the financing?

A Yes.

Q Let's go back for a second and could you describe that method first with respect to the post-petition financing, if we could go back there. Did you use that method and decide the course?

A Whenever we have a credit that is challenged, I mean a borrower that is -- I'm sorry, Your Honor. We have to start re-educating the market as to why new capital to the situation is prudent and what the rates should be.

We began that with the City of Detroit in June of 2013.

One of the objectives of the plan originally given to creditors was to really show the capital markets, not just those creditors who happen to already be lenders to the city, but potentially new lenders.

What were the city's problems and what was the city going to do about it so that on a reorganized basis the city would be a regular borrower they could afford to lend to. So it really began with a six month period that we've already discussed to generate that original proposal to creditors. It was not just about giving them a plan and what we had to do with their securities, but to re-introduce the credit to the capital markets which we did.

Immediately after that we started looking for post-petition financing and we contacted every institution that we could conceivably think of that would be interested in lending to Detroit. That June 13 plan called the offering memorandum for lack of a better statement, was the basis on which we had every discussion with potential lenders.

Q Could you give me an order of magnitude on the amount of discussions, the amount of contacts, the amount of phone calls?

A We called, you know, over 30 qualified institutions beginning in July to determine whether they would provide post-petition financing to the city and we began with that. And that was a very important effort on our part.

Q And describe for me what you mean by a qualified institution in that sense?
A Well, lending to a city and frankly lending to Detroit, is unprecedented. I mean this is the first city that ever actually secured post-petition financing for a Chapter 9 case. That's a relatively new concept for everybody, so that means that the normal providers of municipal credit really had very little interest in doing this because it's just not something they're used to doing.
They don't understand bankruptcy, they were concerned about the status of Detroit from an eligibility point of view, and they didn't really want to be a lender. That and that we had to talk to other financial institutions that were more comfortable because of their knowledge of Chapter 11 in particular and DIP loans.
And taking that concept and extending it to the city. That was a very important educational process we went through in order to arrive at the post-petition financings that we ultimately did secure.
Q And in undertaking this educational process, were you as we discussed above, dealing with new people, or people you already had business history with?
A I would say in almost every case they're institutions that we've had many years of history with.
Q Okay. And did that have any impact on your ability to do

this educational process?
A Yes.
Q And what was that impact?
A Well, we knew all these people from other transactions. And when you call up a bank which has done DIP loans routinely for many years and we say well, we have a new and different DIP loan for you, it's not a difficult conversation to get them interested because at least they understand the arena in which we have to operate which is Bankruptcy Court.
Then they'll bring in their municipal finance experts because they don't typically understand municipalities. And they had to work together to figure out well, what kind of financing could they provide in a -- frankly in a new situation like this.
Q Okay. And did you undertake a similar educational process with respect to the exit financing?
A We did.
Q And did -- the results of that process, what you learned in that process in any way bear on your opinion about the city's ability to access capital on reasonable terms on emergence from bankruptcy?
A It was crucial because as part of our initial marketing efforts on the post-petition financing, we contacted a lot of institutions that we knew would probably not provide the post-petition financing, but we wanted them to be interested

in following the situation to be interested in providing the exit financing.

And in fact many institutions we contacted originally said well, we won't do your DIP loan, but come back to us if you want to do the exit financing. We're only interested in that especially if you achieve all of your objectives. Because this is back last year when we had achieved nothing. We didn't even have eligibility. They were not willing to take the risk.

But they all said if you really achieve your objectives we'd be very interested in looking at the exit financing. So one process built to the other.

Q Okay. Let's -- if I could direct your attention to Exhibit 744, Paragraph 16, Page 6 of your supplemental expert report. Going back a little bit. This remains your opinion about the key factors here?

A Yes.

Q Okay. Let's -- let's talk about the post-petition financing for a moment longer. What lessons did you derive from that, what evidentiary points would you point to in that that underline your confidence with respect to the city's ability to obtain reasonable access to capital markets post emergence?

A Well, there were two really important results of this process. First --

Q This is the post-petition financing.
A Yes, I understand.
Q Okay.
A First, the city was able to borrow on a post-petition financing at the lowest possible price. Barclays had had available to it, but some of it was market flex where if there was insufficient demand, they could raise the rate and we'd have to pay it.

In this case they did not use any of the market flex. In fact the city was able to borrow at 3 1/2% where originally we had assumed 5% or even higher depending on how the market took to paper.

And the second factor that was critical was the book itself was over subscribed by their report four times. They had four times as much demand for this loan as they needed to sell it which was why they didn't use market flex, that related to that is most of the buyers of the loan where I would characterize as normal participants in the municipal finance market.

They were not hedge funds. They were not people coming in here to try to make a fast, you know, ten points. They liked the credit, they understood what we were trying to do, and that was an important factor in my judgment that the city will be able to re-enter the capital markets because even in the post-petition financing, normal participants in municipal

finance participated in the loan.

And I believe likely -- it will be likely to participate in any future financings the city does, including the exit financing.

Q When you refer in your expert report to the anticipated quantitative and qualitative characteristics of the city on a post emergence basis --

A Uh-huh.

Q What are you referring to in particular?

A Well, it really comes back to what are called the -- the credit positives and negatives. And this is the fundamental story we've been telling to the capital markets since last June and we expect the city will continue to tell going forward first, the city will have reduced its unsecured liabilities from over 10,000,000,000 to a little over 3,000,000,000.

That's an enormous change in credit quality because you have less debt to service. Secondly, the cost of servicing that debt over the next ten years has now been fixed with high certainty.

So unanticipated off balance sheet liability costs are no longer going to be a risk factor for a potential buyer of the debt.

Thirdly, having an oversight commission as a kind of another check and balance on city government I think it will

be viewed very positively by the capital markets. It did not exist prior to bankruptcy. It will exist going forward. I believe that's a very important element.

And then on the investment risk side, one has to acknowledge that the ability of the city to stabilize tax revenues and maybe even increase tax revenues because the re-investment program has not yet been proven. And I believe that will be the biggest risk factor looked at by the markets, but that is mitigated by the fact that on an annual basis the city's ability to manage around the re-investment budget to make sure it can satisfy its fix obligations, has now been enhanced.

It the city actually had a problem on a one year basis, they could defer re-investment program cash in order to fund debt service obligations. And that's a further factor, I believe, making the credit story an attractive one.

Q Okay. Did the city's treatment in the plan of pension and OPEB liabilities have any impact on this aspect of your analysis?

A Well, it was crucial because it eliminated as I've testified before, the risk that those contribution costs would have to be dealt with in annual budgets and therefore have an impact on the city's ability to re-invest and also its ability to satisfy its fixed debt service obligations.

Q If I could direct your attention to Paragraph 22 of the

supplemental report on Page 10. Could you explain for the Court exactly how you believe as you state here that the re-investment initiatives will provide a positive to the market in assessing the city as a credit?

A Well, the primary -- the primary benefit of the re-investment program is to enhance the city's ability to stabilize tax revenues and hopefully increase revenues over time. That's why the city should be doing it and that's the primary objective of the re-investment program.

The ability of the city to maintain tax revenue stability is going to be ultimately the most crucial element of the credit story. But at the same time, and I think this goes back to the page we had before where we showed the amount of cash on hand and the projection periods are at $80,000,000 per year.

That's not a lot of cash for a city with a $1,000,000,000 balance sheet. It's less than one month of operating expense. So if it turned out that there is a recession in the next ten years and the city has a short term decline in revenues but it still has to satisfy its fixed debt obligations, it could in theory defer some re-investment program money from one year to the next in order to maintain minimum cash which is a proxy for having satisfied its required debt service obligations when due. And that's the other benefit of this program from a credit perspective.

Q Could you sum up for the Court the major factors that lead to your conclusion that the city will have reasonable access to capital markets on emergence?

A Well, it's primarily because of the improvement in the balance sheet. I mean we reduced the balance sheet of unsecured liabilities from 10,000,000,000 to $3,000,000,000. We have fixed the costs of servicing those liabilities for ten years at a fixed number of the high level of certainty.

There is no refinancing requirement built into the plan which is unique among municipalities. I would actually argue that the credit of Detroit will be better than the credit of most other major cities which I have not dealt with their unfunded pension and OPEB liabilities.

So there's going to be a high level of certainty around the city's ability to service the debt being prospectively issued pursuant to this plan. And that also means that it becomes advantageous to the city to go into the capital markets and borrow again to take out either debt from this plan or borrow or for some other purpose, you'll be able to do so assuming it's demonstrated stability about tax revenues.

Q Now you've -- you've stated that a key assumption of the -- the plan, a key assumption of your opinion about access to capital markets, is the emergence from bankruptcy of the city and the implementation of the plan of adjustment, correct?

A Yes.

Q Is there a flip side to that conclusion? Will the city have access to capital markets if the plan is not accepted and approved?

A No, quite the opposite.

Q Okay. Why -- why do you conclude that?

A Well, we're back to where we were before the bankruptcy. We'll have $10,000,000,000 --

MR. SOTO: I was wondering where Mr. Buckfire was going because the Court specifically excluded this aspect of Mr. Buckfire's initial opinion in his best interest analysis. It was only included in his best interest analysis and was specifically excluded.

MR. CULLEN: The Court as I recall ruled that his expert analysis of -- of best interest did not aid the Court because there wasn't sufficient density or meat in it besides agreed assumptions.

This is a different topic. It is an aspect of consequences for the city --

THE COURT: I agree. You may proceed. Go ahead, sir.

A Could you repeat the question?

Q Yes. It's is the flip side of your conclusion that the city will have access to capital markets if the plan is approved, also true that it will not have access if it is not approved?

A No. And there are two very specific factors I'd like to point to.

First, the city will have the obligation to start repaying on the swap settlement which as we know is a condition of the swap deal, if we repay them we can get rid of them, but if we don't we have to start paying them again. And that obviously will soak up a lot of available cash from the city.

Secondly, the -- the post-petition financing itself will have to begin to be repaid. And I believe that's $4,000,000 a month. So that will also put a considerable strain on the city's available liquidity.

I don't see how the city could borrow in the markets with those obligations already on the balance sheet unless we did a financing that repaid those obligations in order to free up access to cash. So you're stuck in a -- in a -- in a circle where you have these two obligations you have to service assuming dismissal, okay.

But that means you can't get any more money unless you take those creditors out which means you're back into the financing markets to finance potentially a very difficult situation.

MR. CULLEN: That's the conclusion of that expert opinion. The next point I was going to go on toward was the exit financing history and all of the details of the exit

financing solicitation and deal and this -- if the Court is amenable, this might be an appropriate point for our morning break.

THE COURT: Yes, that's fine. We'll take our morning recess now. But before we do --

MR. CULLEN: Yes.

THE COURT: Mr. Buckfire, I want to suggest a question to you that I'm going to give you warning about because it's an important question that may not -- that -- that I think it's fair to give you time to consider relating to this exit financing.

If -- if I -- and I don't want an answer now. If I heard you correctly, I think you said that the one risk factor that the market might be considering that pushes the interest rate higher, is its lack of experience with I'll call it the new Detroit.

So if -- if -- if that's correct, I want to ask what are the advantages economically and non-economically and the disadvantages economically and non-economically of deferring financing for six months or a year.

All right. We'll be in recess until 10:55 please.

(WITNESS KENNETH BUCKFIRE WAS TEMPORARILY EXCUSED AT 10:38 A.M.)

THE CLERK: All rise.

THE COURT: Oh, and did the -- did the city consider

that?

A Thank you, Your Honor.

THE CLERK: Court is in recess.

(Court in Recess at 10:38 a.m.; Resume at 10:56 a.m.)

THE CLERK: All rise. Court is in session. Please be seated.

MR. CULLEN: Good afternoon, Your Honor. Thomas Cullen. May I commence?

THE COURT: I'm sorry?

MR. CULLEN: May I commence?

THE COURT: Yes.

MR. CULLEN: Thank you. Thank you very much.

(WITNESS KENNETH BUCKFIRE RESUMED THE STAND AT 10:57 A.M.)

BY MR. CULLEN:

Q Now we're going to talk about the exit facility and the process of the considerations. When did that process commence with respect to an exit financing facility?

A We began planning the exit financing back in the spring of this year and formally launched the process in July.

Q Who was involved?

A Myself, one of my partners, Mr. James Doak, and one of our directors, Kyle Herman as well as colleagues from Miller, Canfield and Jones, Day.

Q Why did you get involved in the process of exit -- exit

financing in the first place?

A Well, the city has certain cash requirements pursuant to the plan which will need to be funded. Those include cash for the re-investment program, retirement of the post-petition financing, retirement of the LTGO plan securities, and will also be requirements to pay the fees and expenses for the exit financing itself.

Q Can you characterize the importance --

A On the swap -- the swap settlement, excuse me.

Q Can you -- and so that would be the -- the Class 5 claims and the Class 7 claims? The swap and the LTGOs?

A Yes. And the post-petition financing.

Q Now can you characterize for me the importance to the city of being able to refinance those loans on -- on emergence?

A Although it's critical if we don't refinance those loans although the city does have the ability to pay off the swap on a post-petition basis it will be very expensive. It will also not have the incremental cash presumed by the plan available for the re-investment program, we will not be able to take advantage of the settlement that's been reached with the LTGOs to try their debt.

And we will not be able to repay the post-petition financing which is obviously an important factor because if we don't repay them upon exit, the cost of servicing that

obligation will be very high.

Q What -- what impact would failure to pay those obligations on emergence have on the educational process that you talked about this morning?

A Well, it will call into question the city's ability to act in a financially responsible way. The -- the cost of not repaying those existing obligations is high both from an interest rate perspective and a cash flow perspective.

THE COURT: And what's the total of those?

A It's approximately $250,000,000.

Q If --

A Two hundred and fifty, I apologize. Of that two hundred and fifty I think 20,000,000 to 25,000,000 will be set aside as a debt service reserve fund so the net debt being repaid by the plan is approximately $225,000,000.

Q How did you go about determining at the outset the amount of financing that the city would seek?

A Well, it was a combination of factors they'd have to consider. First, of course, is the ability of the city to service its debt post emergence from bankruptcy.

And I've already testified to the need to calculate the debt capacity of the city which primarily was used to deal with I will call emerging securities being given out to existing creditors of the city.

So that we always have to make sure that we don't over

borrow. And in fact with the exit financing to impact the city's ability to operate in the ordinary course. That puts an upper limit to how much we could potentially raise.

Then there is the requirements of the plan which means there are certain obligations to the city that must be retired to emerge from bankruptcy. That sets the minimum bound. And then the difference has to be how much cash can we reasonably expect to borrow for the city and not have to pay too much for.

Q In the process of arriving at the amount of financing that would be sought in the exit financing, were there people involved besides the Miller, Buckfire team?

A I'm sorry, could you repeat the question?

Q Who else was involved besides Miller, Buckfire on this process of determining what to seek in the exit financing?

A Well, because fundamentally it has an impact on the city's debt capacity. Ernst & Young, something that said Conway, obviously the city's own finance people, particularly the CFO, and of course the Michigan Finance Authority representatives were all involved in effectively netting the amount of capital we intend to seek in the exit financing process.

Q And what number did you arrive at initially?

A We originally planned to ask for $275,000,000 from the market.

Q Okay. And that was the result of this process?
A Correct.
Q And -- and then what did you do?
A In terms of the amount? In terms of the amount we saw?
Q No. You had the amount, then what did you do in terms of the process? After -- after deciding we're going to seek this amount of money --
A Uh-huh.
Q What was your next step?
A Our next step was to call qualified institutions with whom we have had relationships, many of whom had been originally contacted as part of the post-petition financing process. And whom -- with whom we've been keeping in regular dialogue throughout this bankruptcy. And we gave them a request for proposal back in July of this year.
Q Okay.
A We also published that same request for proposal on the emergency manager's web site so it was publicly available in case anybody else who was interested in considering this, would be interested and they would contact us.
Q Okay. If we can throw up City Exhibit 639, please. Which is not yet according to my notes, been admitted into evidence. And this exhibit seems to be a -- an email transmittal note. And the second page is -- if we could look at it. The third page, I'm sorry.

A City of Detroit $300,000,000 exit financing bond facility summary of certain key terms and conditions. Do you see that?

(City' Exhibit 639 was identified)

A I do.

Q Can you identify this document?

A Well, this was the original term sheet that we had submitted to market participants for their consideration in July.

Q Okay. And was the same term sheet sent out to all of the market participants?

A Yes. And it was also published on the emergency manager's web site.

Q And who worked on the terms reflected in the term sheet?

A Well, it was the Miller, Buckfire team together with colleagues from Miller, Canfield, and Jones, Day, and from the city.

Q And harking back to our discussion earlier this morning, was -- is this an example of attempting to design a security for a lender to a municipality?

A Yes.

Q And did you consider the same factors we went through this morning in terms of putting together these terms and conditions?

A Yes.

Q And in terms of designing the security that's reflected in this initial term sheet, who took the lead on that?
A Miller, Buckfire did.
Q Okay. And that was your team of -- refresh my recollection who was involved in that team?
A It was myself, Mr. James Doak, Mr. Kyle Herman, and -- and others who were doing analysis supporting this transaction.
MR. CULLEN: With that, Your Honor, I would like to offer into evidence City Exhibit 639.
THE COURT: Any objections?
MR. SOTO: No, Your Honor. Just so I understand what -- all you're entering in is the term sheet, correct?
MR. CULLEN: As opposed to the cover note?
MR. SOTO: Right. I -- I didn't know what you were entering. Are you doing both?
MR. CULLEN: The whole packet, I would think. It would be easier because the cover note says what it is. If you could take a look at it.
MR. SOTO: Yeah, I just want to --
A Your Honor, I'd note this --
MR. SOTO: I have no objection, Your Honor.
A This cover note is to Mr. John Garbino of Barclays but we sent the exact same email to everybody. This is just illustrative.

THE COURT: The document is admitted.

(City's Exhibit 639 was admitted)

MR. CULLEN: Thank you, Your Honor.

Q If you look on Page 3 of the exhibit, there's a section called amortization of principal. If you could -- do you see that, sir?

A I do.

Q What was the significance of this term to the city?

A Well, this as I've testified earlier when the design securities are -- one of our major considerations is not designing a security which potentially could stress the city's ability to operate in the ordinary course while it's trying to rehabilitate itself.

And we regarded the protection of the ten years of operations post emergence as the most important objective of our financing. We did not want the city to ask for financing that would require a lot of amortization during that first ten years.

We wanted to make sure the city's cash flows could be used to support the re-investment program first. That was our primary objective.

Q Okay. And in terms of the stress on the city, what does the schedule proposed here offer in terms of flexibility or burden if you may characterize it in that way?

A Well, this term sheet which is again the term sheet we

proposed in July.

Q Right.

A Basically assumed the city would only have to pay interest on this debt for at least the first five or ten years. And that would mean that the two hundred and seventy-five and 325,000,000 of borrowing, the city would not under this term sheet be required to repay any of it for a considerable long period of time.

And that would give the city adequate flexibility to fund its other debt service obligations to plan parties as well as meet its re-investment program requirements.

Q And if we could look down the page at the section dealing with collateral.

A Uh-huh.

Q Could you tell me what -- what that reflects?

A Well, that reflects the collateral we provided the post-petition financing lender. We'd given the same collateral to that lender pursuant to the original request for financing.

And the market was well aware of the fact that collateral was available to secure the post -- the exit financing and we basically said you can assume for the purpose of this original solicitation, that's available to you, but we are open, and we told everyone this, to any other structure you can propose that might be better for the city. That would require in

effect no pledge of collateral.

But we knew we had to acknowledge that this had already been offered and granted once before and therefore a new lender would probably want to look at the same thing.

Q Okay. Well, with respect to -- you said that you indicated to the recipients of this request for proposal that you had flexibility on this term. Did that representation of flexibility apply to the other terms as well of this proposal?

A Well, no. It was only flexibility that would benefit the city not a lender.

Q And you may have said this already, but how many potential financing sources did you send this out to?

A I believe it was 19 or 20.

Q And I believe you also said that you sent it out -- that you filed it in the data room so it was available to the public, is that correct?

A Yes.

Q In terms of your efforts to solicit parties or solicit interest in this RFP, did you ever put together a summary of those efforts to inform interested parties of the status?

A Yes.

Q If I could put up Exhibit 642. Do you recognize this document, Mr. Buckfire?

A I do.

Q Can you tell me what it is?

A Well, after we had sent out the request for proposals we received back proposals from ten parties. And we summarized them all in this analysis to the benefit of the policy makers both in the city and the state level.

(City's Exhibit 642 was identified)

Q And when you say we in that sentence, we summarized, that's the Miller, Buckfire, correct?

A Miller, Buckfire did, yes.

MR. CULLEN: I'd like to offer Exhibit 642, please.

MR. SOTO: No objection, Your Honor.

THE COURT: It is admitted.

(City's Exhibit 642 was admitted)

MR. CULLEN: Thank you.

Q And so to whom did you present this exit financing update?

A Well, it was presented to the emergency manager, to the chief financial officer of the city. I believe it was also presented to Michigan Finance Authority and other representatives of the state.

Q And if you'll look at Page 4 of this document.

A Uh-huh.

Q What does -- what does this page tell us? Could you tell us how to interpret this?

A Well, these are all the institutions that we'd been in regular contact with since trying to place the post-petition

financing in 2013. And we kept in contact with all of them. We have a relationship with almost all of them that dates back years.

So when we called them and we first said would you like to see the RFP, they said yes, and that's how they made it on to this list.

Q After this point did you set a date for the receipt of indicative term sheets?

A Well, yes. This reflect -- I think the date was the first week of August. We hadn't given them very much time to respond.

Q Was it -- was it July 24th?

A That sounds right.

Q And in the -- in the interim, what did you do with respect to contact with educational efforts with these potential lenders?

A Well, we spoke with everybody that submitted a proposal to understand their thinking behind the structure of their offer, to make sure they understood exactly what the city was looking for to encourage them all to change their terms if possible to make it more competitive from the city's point of view. And to understand that if they had any particular considerations that we were not aware of that might lead them to propose the financing one way and not the other.

Q Now, in terms of the operation of the Buckfire team in

working on this, you wouldn't all be on every call of course, is that correct?

A No.

Q Okay. Was there a process by which you shared information among each other about all of the calls that were undertaken?

A Yes. I would get at least daily updates if not more frequently than that from the members of my team in contact with the lenders.

Q And did -- did part of this effort entail the members of your team reporting back to you on what they'd learned from the marketplace?

A Every day.

Q All right. And when did -- when you received responses, how many initial proposals did you receive?

A We received ten.

Q Okay. And what did you do with those ten?

A Well, we -- we laid them out on a big schedule to basically compare their proposals on the essential terms. Like maturity, interest rate, collateral, things of that nature to try to understand whether some of them were just simply not worth pursuing. And try to narrow it down to the group that we thought we could seriously negotiate to a final transaction with.

Q If I could direct your attention to pages -- beginning on

Page 9 of Exhibit 642.
A Uh-huh.
Q And if we could look at Page 10 through -- let's look through them all. The 9, 10, 11, 12, and 13. Does this -- what -- what is this?
A Well, this is the side by side comparison of the critical economic terms of every lender's proposal. And we received ten.
Q And this was prepared by?
A Miller, Buckfire.
Q And communicated to?
A Well, to the emergency manager. And then to state and city officials.
Q And did you then -- was there then a subsequent round of communication with these ten?
A Yes. We went and asked them to explain their thinking behind their proposals. We tried to understand what they -- where they had flexibility in improving their terms from the point of view of the city. And in particular tried to understand whether they were proposing to make their proposal fully committed or not as opposed to a best efforts financing.
Q And what's the -- what's the importance of fully committed as opposed to best efforts?
A Well, fully committed means the institution is putting its balance sheet behind the proposal. They're not asking you

to take market risk.

In other words they would typically say in an underwriting, well, we'll go out and raise the money for you, but we don't know the price. We'll have to place it first. That's a best efforts undertaking.

And given that the city needs certainty, that we'll have capital available upon exit to deal with certain of its liabilities, a best efforts underwriting is not attractive to the city.

Q Did you narrow down the group of ten?

A We did.

Q How many?

A Three.

Q Which three?

A Jeffries, Barclays, and JP Morgan.

Q And how did you make that determination?

A Well, if you go back and look at their proposals you'll notice that even though they were responding to our term sheet which made it relatively easy to compare, their pricing, at least at that moment in time, was reasonably attractive and most importantly they were proposing to provide a fully backstopped and committed proposal.

They're putting their own balance sheets behind the transaction. And I meant to say Morgan Stanley, not JP Morgan.

Q Could you repeat what you just said because I couldn't hear you.

A I meant to say it was Barclays, Jeffries, and Morgan -- and Morgan Stanley not JP Morgan, so --

Q Okay. After you made this determination, narrowed it down to three, what did you do next?

A We began to actively negotiate with all three parties to get them to improve their proposals. And in particular to give the city as much flexibility to achieve the lowest cost of borrowing as possible.

Q And when you say the lowest possible borrowing. What does that mean?

A Well, clearly -- I shouldn't say that. Asking for an exit financing as part of a bankruptcy always leads the lender to believe they're still taking some risk pursuant to the plan. That it has not yet been proven that the city can operate in the ordinary course, there's still risk associated with the case.

And therefore having the pricing event on this transaction happened after the commitment would necessarily mean that an underwriter would have to look at the city having completed successfully its bankruptcy and therefore all the risks and all the uncertainties associated with the bankruptcy would have been dealt with.

And therefore the pricing will only be on a forward

looking basis rather than retrospectively. And that's a very important element to the pricing analysis that we went through.

Q And do I hear you say that that was a line you held in your discussions with these prospective counter parties?

A Yes. That was an important strategic objective of the city in addition to the up front costs associated with each financing. Obviously the fees are important in any discussion. But having maximum flexibility to price at an appropriate time was a key objective.

Q And what happened next?

A Well, after discussions with all three parties, we recommended Barclays to the emergency manager as the provider of the exit financing.

Q Was there a step of oral interviews with the three parties?

A Yes. I think it was on or around August 5th and I was not here in the city to participate in that, but all three potential lenders came to the city for interviews with a group that included our team from Miller, Buckfire as well as representatives of the city.

Q Could I have put up on the screen Exhibit 640, please? Could you look at the -- the cover material of that and the succeeding couple of pages to identify it for me?

A Well, this is a -- a report --

Q Let's see the next page.
A Sorry.
Q Okay. So could you tell me what this packet is?
A Well, this is the presentation that Morgan Stanley made to our team and to the city on August 5th which was not a meeting I was present for, but I did review the materials.

(City's Exhibit 640 was identified)

Q Did -- did your teammates at Miller, Buckfire report to you on the -- on that meeting?
A Yes.
Q And did they share with you any materials from that meeting?
A They shared with me all the presentations that had been submitted by the potential lenders.

MR. CULLEN: At this point I would like to offer Exhibit 640 into evidence, Your Honor.

MR. SOTO: Your Honor, it's I guess -- well, it's certainly hearsay. And unless we go through it a little bit more, we're just admitting it as what, just -- just that it exists but not for the truth of it?

MR. CULLEN: Well, Your Honor --

THE COURT: I assume it's being offered to show a proposal that was received and considered.

MR. CULLEN: Yes, Your Honor.

THE COURT: For that purpose it is admitted.

(City's Exhibit 640 was admitted)

MR. CULLEN: All right.

Q With respect to -- what did you conclude based upon your review of these proposals and the reports from your team at these interviews about the prospects for the financing and how to move forward?

A Well firstly, I was very pleased that we had three proposals from experienced lenders that were willing to fully commit their balance sheets. So there would be no funding risk associated with taking any one of the transactions. And we could not afford funding risk as part of the plan process. So they met that minimum condition.

Secondly, I was very -- I guess happy is the word I would use, that the cost associated with their offers was I think in the range of reasonableness. They were not excessively high, they were around the 5% discount rate and a number we'd been using throughout as a reasonable cost of capital for the city.

And lastly, they demonstrated a real willingness to work with the city to preserve the ten year period of financial stability that we'd already said was an important strategic objective of any financing process.

Q If I could direct your attention back to City Exhibit 642 and Page 6. Can you tell us what this is?

A Well, this reflects the revised proposals made on August 5th. As I've testified earlier they submitted earlier

proposals from July the 24th. We went back and had numerous conversations with all three parties about improving the terms. This reflects the results of those conversations and what they re-submitted to the city on the 5th of August.

Q And can you describe the process of consideration that turned three into one?

A Well, the first thing we did was look at the costs associated with the underwriter commitment. And on that basis the underwriter's costs were clearly the lowest for Barclays. And I'd note that Barclays, because they had also provided post-petition financing, they had already agreed to waive their exit financing fee if we had repaid the post-petition financing if they were selected as the exit financing provider. So we saved more money by taking Barclays than if we had gone with the other two just on a straight up fee basis.

Secondly, the proposed spreads that they applied, you know, the interest rates that they were assuming we would borrow at were highly competitive. And of course the blended costs is the critical factor. You can see that between these three Morgan Stanley is going to cost us 7.1%. Jeffries and Barclays were basically the same, however the difference was between the two Barclays was providing to the city a flex component which could very much be in the city's interest because of the way they intended to structure the offering.

And for the reason I’ve stated that in addition to being very low on a cost basis, that additional ability to flex final interest costs was very attractive. And that’s why we recommended Barclays.

THE COURT: What is that benefit?

A Well, rather than having to fix the price of the credit -- I’m sorry, fix the price of the loan effectively today which is what the no flex would mean, Barclays was willing to allow us to delay the final pricing by 150 days.

So we would effectively do a private placement with Barclays upon exit from bankruptcy at a variable rate tied to an index and then subject to the rating that we’d get from the two main rating institutes here, and the final flex they need to use to sell the loan in 150 days, there is both negative and positive market flexing as to rates.

So if you -- we were to look at the term sheet that Barclays submitted and that we ultimately provided to the emergency manager, you’ll notice that the pricing formula is a function of the based rate which effectively is the risk free rate for this market.

Then there is a base spread which is a function of the credit rating. And there’s a range of rates that would apply depending on the credit rating the city achieves after emerging from bankruptcy.

And then there’s a final component which is market flex

which is really a function of how well the city tells its story to potential new lenders and how much demand there is for the final investment.

So if you assume that the city was rated BBB by the two agencies, let's assume that base spread is 225 basis points over the index, the flex would be positive or minus, I'd have to go back and look, but it's I think negative 175 to positive 175.

And that means if the offering was over subscribed two or three times presumably Barclays would tell the city, well your final rate is lower than you thought because we had so much demand for the paper that we didn't have to use the marketplace. In fact you get the benefit of lower flex, so the option ran both ways.

THE COURT: What would the interest rate be in that -- in that event?

A It would have -- I have to go and look at the schedules that they submitted. There are two appendices to their commitment letter which show what that could be, but -- what is this.

MR. CULLEN: 634, is this in evidence?

MS. O'GORMAN: 643.

MR. CULLEN: 643, I'm sorry. Is this in evidence?

MS. O'GORMAN: No.

MR. CULLEN: We're going to get to this, Your Honor.

But the --

THE COURT: Okay.

Q Can you tell us what --

MR. CULLEN: But we can do it now.

THE COURT: Whatever you want to do.

MR. CULLEN: Let's -- let's put it in -- let's keep it in order if I may.

THE COURT: Uh-huh.

Q All right. Now let's look at Exhibit 641 if we may. What is -- and look at the pages behind it if you would as well, too. One more. Got it? Okay.

Do you recognize this document, Mr. Buckfire?

A I do.

Q What is it?

A It's our --

Q Describe it generally without getting into the substance.

A It's our final recommendation to the emergency manager to proceed with the Barclays exit financing.

(City's Exhibit 641 was identified)

Q And if you could look at the second page of this document. There's no signature here, but is this -- is it your representation that this is nonetheless Miller, Buckfire's recommendation?

A Yes.

Q And your recommendation?

A Yes.

MR. CULLEN: I'd like to move the admission of Exhibit 641, please.

MR. SOTO: No objection, Your Honor.

THE COURT: It is admitted.

(City's Exhibit 641 was admitted)

MR. CULLEN: Thank you, Your Honor.

Q And you've already begun to go into some of the reasons for the recommendation of Barclays. Could you sum those up for us again, so we can have them in -- in one place. Why Barclays?

A Well, there are -- there are several factors. First, they'd already demonstrated their commitment to the city relationship by providing the post-petition financing.

They had also, as I recollect, waived $1,000,000 of their original commitment fee when their original financing commitment had been reduced which they didn't have to do but they did it because they valued the relationship. They provided the most competitive pricing on a transaction in terms of the up front costs.

They gave the city the greatest amount of flexibility in terms of final pricing. Because to Your Honor's earlier question to me prior to the break you asked why not delay the exit financing and see if you can do better. Well, that's effectively what the Barclays financing allows the city to do.

So we are not having to price this financing with the pressures and uncertainties of the bankruptcy. The bankruptcy will be long behind the city by the time it goes out on a road show to really reintroduce the city's credit to the capital markets which was a very important advantage of the Barclays approach.

And the fact that that gives the city a real possibility of being able to borrow more cheaply if it can take advantage of the negative market flex provisions in the Barclays term sheet.

Q If I could interrupt you for a second. Does the concept of dual structure in relation to the Barclays proposal mean anything to you?

A Well, yes. The Barclays commitment obviously pertains to both the tax exempt portion and the taxable portion of the city's borrowing capacity.

Q Okay. And are there two phases to the dual structure approach?

A Well, the first phase of course is the private placement with Barclays itself. Barclays is going to make the loan to the city available upon consummation. It will be Barclays making the loan, it will be a private placement. It will not require a formal credit rating in order to do that.

But then the second part will be the final offering of bonds to basically replace the private placement with new

bonds, both taxable and tax exempt which we estimate will happen in the 150 days.

And that will allow the city and Barclays to go to the rating agencies, get a formal rating, prepare a proper road show, and really reintroduce the credit in a normal ordinary course way to the widest possible number of buyers.

Q And that public financing step in the -- in the Barclays approach, would it be fair to characterize that as the culmination of the education effort you've been talking about all morning?

A Yes. You know, we tried to get everybody else to adopt the same principal, but only Barclays was willing to give us that optionality. Because of their long history with the city, they had made the original post-petition financing, they'd seen how well the road show had gone when they placed that out.

Barclays ended up holding none of that loan. So they were very comfortable. They could effectively syndicate and price the exit financing and get the city the best possible rate.

Q It says here the Barclay -- in the second last paragraph beginning on the page. The Barclay proposal had the lowest fees.

A Uh-huh.

Q Can you explain what that means, sir? And what -- what

importance it had to you?

A Well, we're trying to minimize the cost to the city. And they did propose the lowest commitment fee. That was only 15 basis points.

They also gave us the ability to extend the term of their commitment if the bankruptcy case took longer than we had originally expected. I think the cost of that would be seven basis points a month for every extension.

And the total fees therefore of 65 basis points were very very low. Certainly compared to the other proposals we had received in the marketplace.

Q Are there other things about Barclays that commended -- that commended Barclays to you as a good partner for the city going forward?

A Well, they're one of the most active participants in the municipal finance market. So any underwriting they bring to the market will be dealt -- be appropriately given attention from investors. That's the most important factor.

Secondly, as I've already testified, they know the city. They know the city's credit. They know what the city has been doing since they provided the post-petition financing. And they value the relationship.

And I think that every turn we asked them to make changes to benefit the city even though they were negotiating on their own behalf, they were appropriately respectful of the city's

legitimate needs to emerge with the financing that would support its operations. And I think at every step of the way they demonstrated their sincerity in being a partner of the city's.

Q Do you -- was there any particular incident with respect to the commitment fee on the post-petition financing to which you can alert the Court?

A Well, as I've originally already testified, the original commitment fee was based on a much larger post-petition financing than we ultimately accepted from them. So we asked them, when we asked them to reduce that commitment, if they would reduce their commitment fee and return the balance to the city which they did. And I believe that was around $1,000,000 which they didn't have to do.

Q If I could throw up on the screen now -- if you could throw up on the screen now --

A As opposed to throwing up.

Q Pardon?

A As opposed to throwing up, right?

Q Either is a possibility. Exhibit 643, please. Okay. Can you tell me what this document is, sir?

A Well, following our recommendation to the emergency manager which he accepted, we filed this notice to begin to seek approval of the exit financing commitment from Barclays.

(City's Exhibit 643 was identified)

Q And this was publicly filed, was it not?
A Yes.
MR. CULLEN: I'd like to move the -- the admission of Exhibit 643 if I might.
THE COURT: Any objections?
MR. SOTO: No objection, Your Honor.
MR. WAGNER: No objection.
THE COURT: It is admitted.
(City's Exhibit 643 was admitted)
Q That's in your book as well, sir. If I could direct your attention to 643, Appendix B-1 at Pages 42 and 53.
A It's easier if I read this. If you don't mind I'll flip through it.
Q No, please, please.
A What tab is this again?
Q Pardon?
A What tab is this?
Q 643, Appendix B-1, Pages 42 and 53.
A I got it.
Q Okay. Do you see Page 42 there in B-1, sir?
A I do.
MR. CULLEN: Do -- do you have it, Your Honor?
THE COURT: Yes.
Q Could you tell us what this reflects with respect to the discussion we were having about market flex?

A Well, this reflects the success of the city in the public offering road show and telling its new story about the new Detroit. And to the extent that the city's convincing that it will operate pursuant to the plan on file, that it will be financially prudent in its operations.

This allows the city to capture the benefit of that by borrowing at a lower price than the base rate. That's what market flex would mean.

So if you actually go back to the earlier page which is Appendix A, base rates, just to try to make the point. Assuming the city is rated BBB which is one of the reasons the 150 day delay is so important because we need to convince the rating agencies first what the credit is.

That would be a base spread of 2 1/2%, but that also means that our maximum market flex if the offering is over subscribed might mean we only have to pay for BBB 50 basis points. Because you have to take the base then subtract out the flex to your benefit and that's what you'd pay.

Now the adverse is true that if the city's credit is not re-accepted in the market because the market doesn't believe the story, then Barclays could actually be offering paper at 4 1/2%.

So it's really up to the city to live up to what we have said it can do and should do to convince the market it's a viable credit.

Q Once the city determined that the Barclays proposal was the best financing available, did the city seek approval of that proposal from other entities?

A Well, the emergency manager did, yes.

Q Okay. And was there a -- was there a submission to the city council?

A There was.

Q Were there presentations to individual city council members?

A Yes. We had one on one meetings with many of the members of city council prior to the city council meeting itself.

Q And discussing particularly the exit financing and the Barclays proposal, is that correct?

A Yes.

Q If I could have City Exhibit 712. Can you tell us what this exhibit is, sir?

A This was the presentation of the implications of the Barclays financing submitted to city council.

(City's Exhibit 712 was identified)

Q Okay. And was this presentation done by the Miller, Buckfire team?

A It was.

Q Were you a participant in that team in pulling together the presentation and reviewing it?

A Yes.

MR. CULLEN: I would like to move into evidence City's Exhibit 712.

MR. SOTO: No objection, Your Honor.

MR. WAGNER: Same, no objection.

THE COURT: It is admitted.

(City's Exhibit 712 was admitted)

Q If you could -- let me start again if I may. Were these substantive discussions both in the full council and with the individual members?

A Yes.

Q How would you characterize the -- the back and forth of the interchange with the council and with the members?

A I would say there were -- there were three main areas of discussion. And it -- I'm saying this, including the one discussions and also with the city council itself.

First, they -- the city council members wanted to understand whether or not we were over borrowing. They did not want to see the city borrow too much because they were obviously concerned about the city's ability to pay that debt when due.

At the same time they wanted to make sure that we weren't borrowing too little. Because the impact of the financing on the city's ability to begin the re-investment program is obviously one of their very big focuses. So we had a lot of discussion over what I would call the debt capacity

implications of this financing.

Secondly, they wanted to be convinced that we had achieved the lowest possible cost of borrowing. I've already explained the elements of why we chose Barclays. We went through the exact same discussion with the council.

So we ended up -- why did we end up with Barclays when they did the first financing. One council member in particular kind of wondered whether or not it was, you know, too easy. And I assured him it was nothing but the case. It was extremely difficult to get this done particularly, and this is the final point, because they were willing uniquely to give us the flexibility of delaying final pricing until after exiting from bankruptcy.

And that was the factor that the city council took the most comfort in because they recognized that having to borrow at exit with all the issues of bankruptcy around that financing, would be more expensive in theory that if we didn't have to do it until later.

And that was also a very important point to get across to the council. And that's ultimately why the council approved this financing.

Q To the -- to the best of your knowledge, did you respond to all the questions and all of the requests for information that you got from the council?

A To my knowledge we did.

Q What happened next?

A Well, after city council approved it, we then sought the approval of the --

Q First, stop. The city council approved it?

A They did.

Q Okay. Then what happened after that?

A Well, then --

Q No, no. they approved it. What -- what amount did they approve the exit financing?

A Well, they approved it up to $325,000,000 because again this was two weeks ago, we -- we wanted to have the flexibility of increasing the exit financing A, if Barclays thought they could syndicate it, but also to take the -- advantage of the LTGO cash out option which had obviously not been considered as part of the two seventy-five request.

Q If we look at Page 6 of Exhibit 712. Let's look at that.

A Uh-huh.

Q What information does this page convey, sir?

A Well, this conveys the -- the process by which the city together with Barclays will ultimately place public financing anticipated by this commitment.

Q And if we look down to formal -- in the bracket called syndication process.

A Uh-huh.

Q Does that put together a -- well, what -- what does that

reflect, sir?

A Well, assuming the city exits -- or strike that. If the city -- if the confirmation order is entered into say by the end of October for the sake of illustration, it will then be necessary for the city together with Barclays to begin to draft the re-offering documents that will eventually support the public financing anticipated by the commitment.

That will take some time to do because it will inevitably have to be reviewed with the rating agencies, with the Michigan Finance Authority, and again with the city itself. That will take some -- several months.

At the same time the formal rating process will begin. And that is something the city has not done for over ten years. Now clearly that's going to be a major re-education of the credit agencies.

We have not up to this point had any interaction with the agencies except very informally because our educational process in the capital markets has been with the providers of capital.

The rating agencies are obviously a very important factor in public offerings, but they don't write checks. But now we're going to have to turn our attention and the city will have to turn its attention to re-educating S & P and Moody's about the new Detroit. And that will not be a short term process. It will require a lot of convincing of them that the

city has really turned the corner, that it has different prospects.

And that will take several months. And that will have to happen over this period of time to be prepared for the -- you know, road show and investor presentations which we would like to see happen in January, well within the 150 day period. And that would give the city and Barclays plenty of time to re-introduce the credit to the capital markets as well as have individual conversations with major holders of Detroit debt.

Q And it is your anticipation part of that road show process and that the culmination of that education process is going to be within the scope of Miller, Buckfire's assignment, correct?

A Yes. And in particular I would note that many of the people that will likely purchase the new bonds and the exit financing are already lenders to Detroit. In fact, many of the lenders to the city who we will go to for this financing, are lenders to DWSD in support of the DWSD tender and exchange offer quite successfully.

So we're not coming to them with a new story, they already know Detroit. They're going to have to now understand a different part of Detroit which is the general fund side. And therefore we have a base of knowledge of the city which is actually quite high but it's taken us a year to get there. Now we have to make sure we take full advantage of that to

achieve the lowest pricing.
Q Let me direct you in the indicative financing timetable to -- to a couple of items. It says city to decide on LTGO repayment. Is it your understanding that that decision has not yet been made?
A Well, we recommended that the city repay the LTGO because we believe that the -- the larger commitment will allow us to do so. So I believe that decision has been made.
Q Okay. And --
THE COURT: Why do you recommend it?
A Well, it's pursuant to the settlement we have with the LTGOs to gain their support for the plan. And -- and their financing is, you know, not cheaper that the proposed exit financing.
Q And with respect to the formal rating process and the amounts and things that will happen in that process, will -- will that have an impact on the price or the coupon price of this refinancing?
A Yes. And it's already anticipated in the pricing schedule we talked about a few minutes before that the base rate is a function of the rates that we receive from S & P and Moody's.
Q Okay. And you've said that the city council approved up to three twenty-five. Is it your -- do you have any understanding as you sit here today as to what factors could

cause it to be less -- less than three twenty-five if it is?

A There would have to be a significant change in market conditions for Barclays to come back and say, look, if you want us to raise that much it will cost you more than you think, so maybe you should voluntarily reduce the size of the offering to make sure your financing is competitive.

And that actually is a function of the effective cost of the LTGO new debt. I mean if the financing of the exit financing costs are lower than the LTGO costs, of course you're going to repay it.

And if it turns out because market conditions have changed, nothing to do with the city of course, that it would be more expensive, maybe you have the ability to rethink that.

Q Okay. And with respect to the financing time line that this exhibit reflects.

A Uh-huh.

Q Is there any implications with respect to the overall state of the market and its favorability for this offering on which you have advised the city?

A Well, the conditions for issuers now in the municipal finance market are very favorable. There has actually been a tremendous decline in the amount of supply of new bonds in this market over the last 18 months.

Cities simply are not issuing as much debt as buyers would like. And so coming out with a relatively high quality

bond which has been rated appropriately, I believe will be very well accepted in the market.

So the fundamental supply demand conditions in the municipal finance market are very very good. But of course conditions can change.

The bigger risks are really the overall risks in the financing markets about, you know, where are treasuries, will the current rally in treasuries reverse. That will have an impact on funding costs.

But the ability of the city to have access municipal finance market itself, I don't believe is at risk. The cost of that financing will have much more to do with overall capital market conditions than the conditions in the municipal finance market.

Q   If you look at the third note on this financing timetable under city council approval, the note is complete financing documentation. Do you see that?

A   I do.

Q   Where do we stand on that?

A   I believe they were submitted to the Court last night.

MR. CULLEN: And we'll be introducing those in -- in a moment, Your Honor.

A   So we're ahead of schedule.

Q   Oh. And what is the MFA approval process?

A   Well, any financing done by a Michigan city has to comply

with state law. So the Michigan Finance Authority has to review the offering and make sure it complies with state law and it's eventually -- technically the financing will be issued by the Michigan Finance Authority on behalf of the City of Detroit.

Q And where -- where does that stand?

A That's been concluded and the Michigan Finance Authority approved this transaction.

Q And with respect to the next, emergency loan board review. Could you explain that one, sir?

A As part of the state's oversight of the City of Detroit's restructuring, the emergency loan board has the authority to review and approve any contemplated transaction and they have approved this one as well.

Q And where does that stand?

A It's been approved.

Q And the -- the amount of the financing they approved?

A Three hundred and twenty-five million dollars.

Q Are you aware of any further approvals required under applicable state law to consummate the financing?

A No.

Q Let's look at City Exhibit 770 if we might. And this is the -- it -- can you identify that document for me, sir, please?

A These are the exit financing documents that were filed

last night that reflect the full documentation necessary to execute the exit financing.

(City's Exhibit 770 was identified)

MR. CULLEN: I'd like to move City's Exhibit 770 into evidence if I could, Your Honor.

MR. SOTO: No objection, Your Honor.

MR. WAGNER: Same, no objection.

THE COURT: This reflects the new amount?

A Yes, it does.

THE COURT: It is admitted.

(City's Exhibit 770 was admitted)

Q I would like to go back for a second. What -- to the three twenty-five number here. Your understanding of why three twenty-five as opposed to two seventy-five?

A Yes.

Q What is it?

A It reflects the ability of the city to repay the LTGOs in cash rather than issuing new debt pursuant to the plan.

Q Okay. And in terms of the -- the balance sheet impact of that if you will, what is it?

A It has no balance sheet impact because if we didn't repay -- if we didn't borrow $325,000,000 we borrowed two seventy-five which means the 55,000,000 due to the LTGO class would be outstanding.

Q Okay. And just to -- to make this clear, let's go back

to Exhibit 712 at Page 6 where there's an entry for the LTGO repayment. 712, Page 6. That's the same thing, is it not, sir?

A I'm sorry?

Q That's the same thing, is it not?

A Yes.

Q All right. And if we look at the -- the begin rating service evaluation process, is that a formal process?

A Well, that's an informal part of the process. As I testified earlier, it's important to begin the re-education of the credit agencies about Detroit as soon as possible.

And this is what I would call the shadow rating process and that you need to go through to get them to understand what's been done, why you did what you did, what the impact has on credit. So that as part of the initial commitment by Barclays because they will be the ones who initially finance the city, we have a pretty good idea of where the rating agencies are coming out on implied ratings. So this is the informal part of the process.

Q Okay.

A And then the formal part of the process will begin later once we've exited bankruptcy fully.

Q In sum, Mr. Buckfire, do you believe that executing this financing on these terms is beneficial to the city?

A I do.

Q Why?

A It's the lowest cost, the greatest flexibility, and it's the appropriate amount of capital with no underwriting risk to the city.

Q And does it have any impact on the educational process we've been talking about all morning?

A Yes. The fact that a respected municipal financing bank is willing to extend credit again to the city on an exit basis, which will support the rating agency process and the ultimate reoffering process will allow the city to for the first time in ten years, go out and tell its story to capital markets participants and make them willing lenders to the city on a prospective basis.

Q And what impact if any does your experience of this exit financing process have on your previously rendered opinion that the city will be able to access the capital markets on reasonable terms post emergence?

A I think we've already proven that. And in fact the Barclays commitment itself proves we've re-entered the capital markets. Because they're proposing pricing which is in my opinion appropriate and reasonable for a borrower of this kind.

MR. CULLEN: That's all I have, Your Honor.

THE COURT: What -- what is the interest rate on the Barclays interim loan if I can use that phrase?

A Can I refer to the term sheet?

THE COURT: Yes.

A It was in the presentation we gave city council, but I want to go to the commitment letter itself to make sure.

THE COURT: Sure.

A Okay. This is Exhibit 643 and I'm looking at Page 27 of 52. Right. So you see they have two different pricing options. The initial rates was the private placement portion and then there's a public offering.

So let's talk about the initial rates which I believe is your question.

THE COURT: That was my question, yes.

A Okay. So they're proposing to use the municipal swap index rate and add 425 basis points to that. So that's their initial pricing which is a very low rate. And obviously because it's variable the city will be paying the lowest possible cost during the 150 day period for that commitment from Barclays.

THE COURT: And when does the commitment expire? The end -- the end of November?

A Yes. And we have the right to extend by paying them seven basis points for every month additional that we require.

THE COURT: If the -- if the loan closes at the end of November what would you expect the interest rate to be on the private placement?

A Well, the SIFMA municipal swap index that would be relevant here, okay, is I believe as of last week it's about 125 basis points more or less. So if that holds, it will be about 5 1/4 -- 5 1/2%.

THE COURT: Okay. All right. Let's break for lunch now and reconvene at 1:30, please.

(WITNESS KENNETH BUCKFIRE WAS TEMPORARILY EXCUSED AT 11:56 A.M.)

THE CLERK: All rise. Court is in recess.

(Court in Recess at 11:56 a.m.; Resume at 1:30 p.m.)

THE CLERK: All rise. Court is in session. You may be seated. Recalling case number 13-53846, City of Detroit, Michigan.

THE COURT: You may proceed.

(WITNESS KENNETH BUCKFIRE RESUMED THE STAND AT 1:30 P.M.)

CROSS EXAMINATION

BY MR. SOTO:

Q Mr. Buckfire, we met before. Actually several times. My name is Ed Soto and it's nice to see you again.

Let's start by discussing your role in something different than what you testified about this morning. I'd like to discuss your role in the valuation and disposition of the DIA assets.

And when I refer to the DIA, I'm talking about the physical DIA museum and the art collection that's stored

inside of it, okay?
A Okay.
Q And when I refer to the DIA Corp., I'll be talking about the non-profit organization that runs and operates the DIA, okay?
A Yes.
Q Now, Mr. Buckfire, you realized early on in your engagement with the city in the spring of 2013 that the DIA is owned by the city, correct?
A Yes.
Q And you became aware of that fact -- you became aware of the fact that the city owns the art collection at the DIA and the building itself, correct?
A Yes.
Q And you also recognized early on that because the DIA collection and the DIA building are owned by the city, those assets would have to be valued as potential non-core assets and dealt with appropriately if the city sought protection under Chapter 9 proceedings, correct?
A Yes.
Q And you're aware of the fact that the City of Detroit has sold assets to address its financial aids in the past, correct?
A I'm sorry, did you mean prior to the bankruptcy, or during the bankruptcy?

Q Yeah, prior to the bankruptcy.
A Yes.
Q And you had independently decided that it would be necessary to determine the value of the DIA assets in order to satisfy the requirements of Chapter 9 of the Bankruptcy Code, correct?
A I recommended it be reviewed for that purpose, but I did not decide it.
Q Fair enough. And you were involved in the decision to include the DIA and the art collection as a city asset in the city's June 14th, 2013 proposal to creditors, right?
A Yes.
Q And you even met with Governor Snyder and spoke with him about your duty -- your duty to maximize the value of assets for the city in connection with the plan of adjustment under Chapter 9, correct?
A Well, it wasn't my duty, it was my duty to recommend the appropriate ways for the city to maximize its value for the benefit of its citizens and creditors.
Q You're right. It wasn't your duty, but the city's duty, correct?
A Correct.
Q All right. And it was your understanding that the Governor knew from your statements that you were trying to maximize the value of the DIA assets, right?

A I indicated to him we had to review it to understand what the value might be.

Q And -- and you also had several meetings with representatives of the DIA Corp. in the spring of 2013 alerting them to the fact that it might be necessary to monetize or sell the art collection at the DIA, correct?

A Yes.

Q Mr. Buckfire, I've handed you what we will now bring up, Kim.

MR. SOTO: And it's in the packet, Your Honor.

Q FGIC Exhibit 3298. Take a minute to take a look at that. I hid it at the bottom.

A I found it.

Q Now this is an email from you to Bill Nowling of the emergency manager's office dated July 25th, 2013 regarding the DIA and Christie's. Do you see that?

(FGIC Exhibit 3298 was identified)

A Well, have you previously introduced this into my deposition?

Q You saw it at your deposition.

A Okay. Let me just go back and look at it.

Q Please absolutely.

A Because I'm reading it from the bottom which is my original email. Because your first one is not -- hold on. Yes, I recall this.

Q Now you've seen it before, correct?
A Yes.
Q And in fact you're the author of this email, correct?
A I am.
Q And you sent it to Bill Nowling who is the emergency manager -- or was the emergency manager's assistant at the time, correct?
A Yes.

MR. SOTO: Okay. So, Your Honor, we would offer Exhibit 3298 into evidence.

THE COURT: Any objections?

MR. CULLEN: No objection, Your Honor.

THE COURT: It is admitted.

(FGIC Exhibit 3298 was admitted)

Q And in this email chain on the bottom of the second page beginning with the phrase, this predates both of you. Do you see that?
A I do.
Q You relay the fact that you and Bruce Bennett had several meetings with DIA trustees and the museum director to warn them of the risk that creditors would focus on the value of the collection, correct?
A Yes.
Q And in fact in April or May of 2013 you informed the DIA Corp. that there was a risk that you would have to recommend

among other alternatives taking steps to monetize the art collection, isn't that right?
A Yes.
Q And the DIA Corp. made clear that it would fight the city if the city attempted to generate value from the art collection, didn't it?
A It did.
Q And at the meeting you had with the representatives of the DIA Corp., those representatives thought it was a good idea to spend money refurbishing the DIA's dilapidated and condemned parking garage suggesting that was all they needed to do to raise revenues from the -- for the city from the DIA asset, correct?
A Not -- no, not exactly. That's not what they actually --
Q Okay. Well, what did they actually do?
A At that particular meeting, they asked myself and Bruce Bennett, well, what can we do to satisfy the city that we're actually adding value. And I reminded them that there were many things they could do including renovating the dilapidated and closed garage that supposedly serviced the DIA which would require a significant investment, but that in fact that was only one element of what they needed to do potentially.
Q So you explained to the folks at the DIA Corp. that they'd have to propose something more substantial than just renovating the parking lot, right?

A At that point it was a theoretical discussion. We had no facts on which to base any kind of ask.
Q And after your meeting with the representatives of the DIA Corp., you told Mr. Gene Gargaro, the chairman of the board of the DIA Corp. that the DIA would have to propose something dramatic if it wanted to protect the art, correct?
A We did.
Q Now, let me hand you another exhibit that's in there and that's Exhibit 3496. And I hope we gave it to -- to you this time.
MR. CULLEN: Yes, I have that.
Q Kim, if you'll bring it up. You'll recognize it again from your deposition.
A I do, yes.
Q Now this is an email from you to Mr. Gargaro dated April 29th, 2013 regarding the DIA visit, correct?
A Yes.
(FGIC Exhibit 3496 was identified)
Q And in fact you're the author of this email, right?
A I am.
Q And you sent it to Gene Gargaro at the DIA Corp., right?
A Yes.
MR. SOTO: Your Honor, we would offer Exhibit 3496 into evidence.
MR. CULLEN: No objection, Your Honor.

THE COURT: It is admitted.

(FGIC Exhibit 3496 was admitted)

Q Now it's in this email at the very top that you tell Mr. Gargaro, you know, and I'll call your attention to the first line there. That the DIA board of trustees, and I'm quoting it, "should be proposing something dramatic, not just about refurbishing the parking garage". Do you see that?

A I do.

Q But at the time that you exchanged this email with Mr. Gargaro which is around I guess April 29th, 2013, you didn't know what the value the city should get in exchange for transferring the DIA assets, right?

A Correct.

Q But even though you didn't know what the specific value would have to be, you did know that it would have to be a big number, right?

A I did.

Q And a big number is also what you had in mind when you used the word dramatic in describing to Mr. Gargaro what the DIA Corp. would have to propose with respect to the transfer of -- of the DIA assets, correct?

A Yes.

Q So -- so you approached Christie's about conducting an appraisal of certain pieces in the art collection, correct?

A Yes.

Q And you did that because you -- you wanted to understand what the value was of -- of that artwork, correct?
A Yes.
Q Okay. And the city officially engaged Christie's in August of 2013, right?
A That's correct.
Q But that engagement with Christie's was of limited scope, correct?
A Yes.
Q In fact you specifically told Christie's to only value those pieces of art that were purchased with city funds in whole or in part, correct?
A That's correct.
Q And you knew that by setting those parameters, Christie's would only be appraising the value of a small percentage of the art at the DIA, something a little over 4%, correct?
A Yes.
Q Now Christie's did not independently determine which pieces of art were city owned versus not city owned, did it?
A I don't have specific knowledge of how they decided that.
Q Okay. In fact you -- do you -- if you recall, do you recall that the DIA Corp. identified what they thought was city owned and not city owned at that time?
A I believe that's how Christie's came up with the original appraisal list.

Q And this is the same DIA Corp. that prompted you to warn Governor Snyder before he met with Mr. Gargaro, that the folks from the DIA Corp. were going to encourage him, the Governor, to tell you and your firm to back off and leave the museum alone, correct?

A Yes.

Q And this is also the same DIA Corp. that made it clear that they would fight you to the ends of the Earth if you touched the art collection even though the DIA collection belonged to the city, right?

A I don't recall them using that phrase. They did indicate they would object.

Q Okay. Well, I mean I could go back to your deposition, but that's close enough. Now in setting the scope of Christie's assignment, you never took any steps to determine which of the pieces of art within the DIA collection had some restrictions on alienation, or use, or transfer, did you?

A Personally I did not.

Q And you would agree that you never undertook to determine whether the ownership of the art at the DIA was held in any way that would, you know, that could be transferred or monetized, right?

A Correct.

Q Shifting gears a little, Mr. Buckfire. You received a number of proposals for transactions involving the art at the

DIA, correct?
A Yes.
Q And one of them was a proposal made on -- on or around October 11th of 2013 by Mr. Gargaro, correct?
A I don't recall exactly what he gave me, but what are you referring to?
Q Let's see if this will help a little. We'll move on. He proposed transferring the DIA assets to another entity or vehicle to protect it from future creditor exposure.
A Uh-huh.
Q If you -- if you recall the beginning of that. And the proposal would have called for a special millage, the proceeds of which would be used by the city in exchange for transferring the DIA to an authority or similar vehicle, correct?
A Yes.
MR. CULLEN: Objection, foundation, form. That's a long quotation for him to recall and assent to freehand.
MR. SOTO: But he did recall it.
THE COURT: Well, if the witness doesn't know, he can say so.
MR. CULLEN: All right.
Q Do you recall the deal -- the transaction that Mr. Gargaro was proposing with the millage?
A Yes.

Q And did I describe it about as you recollect?

A It was a long time ago, but it was generally about a special millage to support the operations.

Q So -- and -- and -- and as you recall it was a special millage that would be raised, the art would be transferred to an entity, the special millage would be used by the city, correct?

A That was his suggestion, yes.

Q And this discussion with Mr. Gargaro contemplated taking an asset off the table, or in other words transferring the DIA assets from the city in exchange for compensation to the city. Do you recall that?

A Yes.

Q Okay. And when you were speaking with Mr. Gargaro are you aware of the fact that Mr. Nowling, again I think he's an assistant or spokesman for the emergency manager, in the emergency manager's office. Do you remember Bill Nowling?

A I do.

Q Okay. That he had indicated that the city hadn't proposed selling any asset but that it also hadn't taken any asset off the table because the city couldn't negotiate in good faith with creditors by taking assets off the table. Do you remember that?

A Vaguely.

Q Well, you know what, let's look at your deposition, it

might help you. Turn in your deposition there in front of you July 16th. Let's look at Page 115. We'll start at Line 6.

A Uh-huh.

Q It says question, okay. If I'm reading this correctly, there's a statement here, the office of the state appointed emergency manager Kevyn Orr says it did not initiate the proposal but spokesman Bill Nowling offered these words and then it says, do you see that? Answer, I do.

Question, and he says and I quote, and I am reading the quote that you have here. "Let's assume it's correct. We haven't proposed selling any asset, but we haven't taken any asset off the table. We can't. We cannot negotiate in good faith with creditors by taking assets off the table and all our creditors have asked about the worth of the DIA and we've told them they're welcome to find out".

And then if you drop down on Line 4 in the end. Question, do you agree with that statement there? Answer from you, I do.

Does that refresh your recollection?

A Yes, but --

Q And when you testified to that effect --

THE COURT: Pardon me, counsel.

Q -- you were telling the truth, correct?

MR. SOTO: Oh, I'm sorry.

MR. CULLEN: The statement by Mr. Nowling, is that

what you're referring to?

MR. SOTO: Yeah.

Q And -- and when you were -- when you were testifying that you agreed with it you were telling the truth, correct?

A Yes.

Q And you agreed with Mr. Nowling that you -- you -- that the city could not negotiate in good faith with creditors by taking assets off the table, correct?

A Yes.

Q Back at the ranch. You never responded to Mr. Gargaro's proposal about the millage, did you?

A I don't think we did. No, we didn't have any -- any information from Christie's yet as to what the value might be. And we also didn't believe that he could deliver on a special millage which would have required the votes of the affected counties.

Q So now you -- there were also other proposals that were made regarding the art, correct?

A At various times, yes.

Q And one of those proposals you discussed with the DIA Corp. would involve raising enough money --

A Uh-huh.

Q -- from their trustees and other community members to justify conveying the art collection to an authority, correct?

A Yes.

Q Okay. But at the time that you discussed that proposal in October of 2013, that's the time frame you gave --
A Uh-huh.
Q -- you had not done an analysis of the value of what the city would need to receive to justify taking that kind of asset off the table because again you hadn't -- you hadn't gotten Christie's analysis yet, correct?
A Correct.
Q And Miller, Buckfire was relying on Christie's to value the art at the DIA because neither you nor anyone else at Miller, Buckfire is an expert in valuing art, correct?
A Correct.
Q And on December 18th of 2013, Christie's issued its final fair market value estimate for the limited works of art that it appraised. Do you remember that?
A I do.
Q And it said that those works were worth between 454,000,000 and 867,000,000, right?
A Yes.
Q Now more recently the city retained Artvest to value the DIA art collection. Were you involved in that?
A No.
Q Okay. Were you aware that they were retaining another entity?
A Yes.

Q Okay. And that happened sometime around June of 2014. Now -- and more recently Artvest issued a report sometime in July of 2014 estimating that the entire collection had a gross value of between 2.7 billion and 4.7 billion. Were you aware of that?
A Yes.
Q Okay. So now even before you got the Christie's and Artvest report, you knew you had an obligation to identify the value of any asset that might be available to the city pursuant to the plan of adjustment, correct?
A Yes.
Q Okay. And you found it very important that any settlement would provide amounts over time that were consistent with the valuation range of the analysis that you had gotten from Christie's, correct?
A Yes.
Q Okay. Now, Mr. Buckfire, you understand that certain settlements have been struck in this bankruptcy, right?
A I am.
Q And Miller, Buckfire had a role on behalf of the city in virtually all of these settlements, correct?
A Yes.
Q Okay. And that role was to provide the emergency manager and the city with the analysis of the relative value of each claim that needed to be settled, correct?

A That was one element of our advice, yes.
Q And also as a second element the manner in which the negotiations should be handled. That was part of what you provided to the emergency manager and the city, correct?
A Yes.
Q And thirdly, you -- you provided assistance in the construction or creation of various offers to creditors, correct?
A Yes.
Q And then fourthly you provided consulting services to provide assistance for the emergency manager in negotiations with creditors to arrive at acceptable transactions, correct?
A Yes.
Q Okay. And you also did substantial analysis of all the proposals that were provided to you by different constituencies in this bankruptcy, correct?
A Yes.
Q Okay. And one of those settlements includes what is referred to as the grand bargain, correct?
A Yes.
Q And that contains a pledge of at least 366,000,000 in foundation funds and 100,000,000 of DIA Corp. funds over a 20 year period, correct?
A In addition to a contribution from the State of Michigan, that's correct.

Q Yes. Am I stepping on something? No.

THE COURT: No, I can't imagine you're the cause of this.

MR. SOTO: Thanks, Your Honor.

THE COURT: But -- but we should take a pause and ask for help.

MR. SOTO: Yeah.

THE COURT: So let's just stand down for a moment. And hopefully who's ever listening in will rush up here and fix the problem for us. If you want to have a seat in the meantime, that's fine with me.

I hope that's not someone's cell phone. There's something wrong with the camera? I hear it more from the left side of the courtroom. Is there someone you can contact LaShonda? I'm sorry? Okay.

I have a message that someone will be right here. We have a buzz in the speaker. I'm sorry. You mean we have to tolerate this the rest of the afternoon? I'll take a break right now.

Okay. It -- it does appear that we do have to take a break from our proceedings to see if we can get GSA's attention. Good luck with that, right? But I don't think we can proceed with that buzzing. So with apologies we will be in recess for an undetermined amount of time here. I just need one more second here. All right. I'm just going to

leave it. Okay. We're in recess.

(WITNESS KENNETH BUCKFIRE WAS TEMPORARILY EXCUSED AT 1:54 P.M.)

THE CLERK: All rise. Court is in recess.

(Court in Recess at 1:54 p.m.; Resume at 2:33 p.m.)

THE CLERK: All rise. Court is back in session. You may be seated.

THE COURT: Oh, did it just start buzzing again?

MR. CULLEN: No, I think it's all right. I can't hear it.

THE COURT: Not so much. This is -- this remains intolerable so we're -- we're going to have to continue our recess and not proceed. My apologies to you. Did the people from -- they're still here. What can you do to fix this for us?

A VOICE: We're going to have to bring in a lift to get up here and change out the ballast.

THE COURT: How long will that take?

A VOICE: I don't know. At least an hour, probably more. We have to move most of this equipment and the lift is on the third floor right now. It's got to come down. Probably at least an hour.

MR. CULLEN: If you've got a ladder, I'll sign a waiver and go get it.

THE COURT: The city is going to waive your

liability. Okay. Well, all right. Let's --

A VOICE: About an hour.

THE COURT: Yeah, let's -- let's see if we can reconvene at 2:30 ad if it has to be longer, it will have to be longer. I'm sorry, 3:30. 3:30 and we'll see if we can reconvene then. I don't know what else to do. So that's what we'll do.

MR. SOTO: Thank you, Your Honor.

THE CLERK: All rise. Court is in recess.

(Court in Recess at 2:35 p.m.; Resume at 3:24 p.m.)

THE CLERK: All rise. Court is back in session. You may be seated.

THE COURT: Is everyone here?

MR. WAGNER: I think we're missing --

THE COURT: Okay, we'll -- we'll stand by. No apology needed. Take your time getting organized.

(WITNESS KENNETH BUCKFIRE RESUMED THE STAND AT 3:26 P.M.)

BY MR. SOTO:

Q Mr. Buckfire, when we last met I think I asked the following question. I was asking you about the settlement that was called the grand bargain. Do you recall?

A I do.

Q And I believe it contains and I -- and you corrected me appropriately, a lump sum payment by the State of Michigan of $194.8 million dollars, correct?

A Yes.

Q A pledge of at least 366,000,000 in foundation funds, correct?

A Yes.

Q And a pledge of 100,000,000 of DIA Corp. funds to be paid over a period of 20 years, correct?

A Yes.

Q Okay. But the city at the time that it entered the grand bargain had -- it had already entered into the grand bargain in January of 2014 before it received the Artvest report, correct? The Artvest -- just to give you a context, the Artvest report was dated July of 2014.

A That’s correct.

Q And since the date Artvest’s expert report was received by the city, and again that’s in July 8th of 2014, at least that’s what’s it’s dated, as far as you know, you nor anyone else at Miller, Buckfire has made an effort to increase the value obtained for the DIA assets, correct?

A That’s correct.

Q Now you concluded that the amount of the settlement offered for the artwork in the grand bargain was fair because it was in the high end of the range of the Christie’s report, correct?

A Yes.

Q But at the time the grand bargain was announced, again

just a few weeks after the December 18th, 2013 Christie's report, you knew that even if an offer for the art was at the high end of the Christie's report, that appraisal was only for a small percentage of the art collection at the DIA, correct?

A Yes.

Q Now I think in the packet that I handed you earlier should be City Exhibit 343 that was entered earlier in these proceedings and I'll have it up on the board for everyone else. And that's a letter dated December 3rd, 2013. It's -- you can't see it. It's -- you certainly can see that it's to Kevyn Orr here. Let's go to the last page, Kim. It's signed by Doug Woodham who is the President. The date would be there. There you go. Maybe you can blow that up a little.

So it's signed by Doug Woodham who is the President of Christie's. And again it shows as a carbon copy, you and Bruce Bennett, correct?

A That's correct.

Q And do you remember receiving this letter?

A I do.

Q Okay. Now certainly take the time to look at all of it if you want, but we're going to be asking about something starting on Page 3 if you want to start there.

If you look back on Page 3 of 5. Do you see under the heading alternatives to sale?

A Uh-huh.

Q Do you recall reviewing the alternatives to sale that are there? They start on Page 3, and they go to Page 4, and then they end on Page 5.
A Yes.
Q And so you knew about these alternatives, correct?
A Potential alternatives, yes.
Q Fair enough, potential alternatives. But you didn't discuss them with any -- anyone at Christie's, did you?
A I had discussed these concepts in general with them over a period of time, but not after receiving this letter.
Q But not after receiving the letter?
A That's right.
Q Okay. Do you recall a Mr. Provost? Do you recall meeting a guy named Paul Provost in New York in September of 2014 -- of 2013? September 3rd or September 4th, 2013?
A I'm sorry, could you -- what are you asking about him?
Q Do you recall meeting Mr. Paul Provost of Christie's in New York on September -- I think I have the date here, give me a second. September 4th, 2013.
A I can't recall the exact date, but I met with a lot of people at that period of time.
Q And you don't remember that?
A I don't.
Q Saves some questions. Let's move on. Now Mr. Buckfire, you were aware that Houlihan Lokey received four indications

of interest regarding the art at the DIA dated around April 4th, 2014, correct?
A Yes.
Q And you never called any of the four parties that were listed that had indicated that interest, did you?
A That's correct.
Q And you never called anyone at Houlihan Lokey about them either, correct?
A Correct.
Q Okay. And you never tried to contact anybody who might be involved in the art monetization world to see if they would be interested in helping the city monetize the DIA art without selling it, correct?
A Aside from Christie's, that's correct.
Q Now let's switch gears for a second. Tell me if this is correct. If it's not, I'd like to know. You never did a present value calculation of the 466,000,000 that is paid by the foundations and the DIA Corp. over the 20 year period under the terms of the grand bargain, did you?
A No.
Q Okay. And nobody else at Miller, Buckfire did a present value calculation of that -- those sums either, correct?
A Not that I'm aware of.
Q Let's talk a little more about the grand bargain. You pointed out that another part of it is the state contribution,

right?

A Yes.

Q And in your view the consideration the state is receiving in exchange for the payment of 194.8 million is not just the elimination of litigation, but also the ability to help maintain an important cultural asset to the southeast Michigan region in the form of the DIA museum, correct?

MR. CULLEN: Objection, foundation. Asking for the state's motivation.

MR. SOTO: I'm asking for his view.

THE COURT: Would you rephrase the question then, please?

MR. SOTO: Sure.

Q Is it your view Mr. Buckfire, that the -- that the consideration the state is receiving --

A Uh-huh.

Q -- in exchange for the payment of a 194.8 one time lump sum payment, is not just the elimination of litigation --

A Uh-huh.

Q -- but also the ability to maintain an important cultural asset to the southeast Michigan region?

A Yes. And I would modify that by pointing out the value of maintaining the DIA to the citizens of Detroit.

Q Also a fair point. And before the state agreed to pay the state contribution, you had a discussion with Dennis

Muchmore in the spring of 2013, correct?
A I've had many conversations with Mr. Muchmore. Which one are you referring to?
Q We'll get to it. I'm going to identify --
MR. CULLEN: I would only object and direct the witness to be very careful about conversations which have had with representatives of the state in the presence of either lawyers for the state, or the city pursuant to the common interest privilege.
Q Mr. Muchmore is the Governor's Chief of Staff, correct?
A Yes.
Q And -- and you had many conversations with him, correct?
A Yes.
Q Now the one I'm referring to is the one we discussed at your deposition. And if you will -- if it will refresh your recollection, I'll call your attention to Page 153 of your deposition, Lines 7 through 23.
MR. CULLEN: Object. There is no -- there is no indication that his recollection needs refreshing.
MR. SOTO: Well, he said he had many conversations and couldn't remember every single one. I'm trying to refresh his recollection.
THE COURT: I'll permit it. Go ahead, sir.
Q Now do you see where I asked and were -- were all those conversations, conversations that you understood to be part of

the mediation process and covered by the Judge's mediation order?

THE COURT: Excuse me, it's actually not proper to read into the record the materials being used to refresh the witness' recollection.

MR. SOTO: Okay. I'll let him.

THE COURT: In fact I'm going to ask you to take it off the screen.

MR. SOTO: Please do. Go ahead and --

THE COURT: The procedure is for you to just read it to yourself and then let us know if that refreshes your recollection on the question.

A Thank you, Your Honor.

THE COURT: And then if it does, you can answer.

A Thank you.

THE COURT: Without reading it.

A Yes, I recall this.

Q And so do you recall having one conversation prior to any of the mediation with Mr. Muchmore, correct?

A Yes.

Q And you shared with him a copy of the term sheet that you were negotiating with the DIA Corp. for the -- for the transfer -- for the -- or rather in connection with the DIA settlement, correct?

A I wouldn't use the word negotiate to describe that term

sheet.
Q Well, how would you describe it?
A Well, at that point we were trying to explain to them that if they really wanted to protect the museum and put it in the permanent and in viable position, there would have to be a transfer of consideration to the city and they asked well, how would you structure that.
So we came up with a term sheet that would explain how we would do it and we provided that to them. But there was never any negotiation around the terms.
Q Okay. And that's the term sheet that you shared with Mr. Muchmore?
A I describe it to him. I'm not sure I ever shared it with him, but I -- I described the terms to him, but I'm not sure I actually gave it to him.
Q And the reason you were sharing this with Mr. Muchmore is because you believed that politically active board members of the DIA Corp. would call the Governor to complain about your team because it was daring to ask for money for the transfer of the DIA art collection, correct?
A Correct.
Q And your purpose for having this discussion was to make the Governor's office aware of an alternative in which value would be paid to the city in exchange for protecting the art collection from sale risk, correct?

A I would modify that with the word potentially, but otherwise you're correct.

Q Okay. And one last question about the DIA. When you first addressed the issue of the potential transfer of the art at the DIA with the Governor, you didn't discuss pensions with him, did you?

A Not specifically in that context, no.

Q Okay. Let's switch gears, Mr. Buckfire. You understand that the plan -- that under the plan of adjustment, recoveries for the pension claims are being funded by a few sources over the next 20 years, right?

A Yes.

Q And they include payments from the DWSD, right?

A Yes.

Q Payments from the foundations that are contributing to the grand bargain, correct?

A Yes.

Q Payments from the DIA funders, correct?

A Correct.

Q Payments from the state, correct?

A Yes.

Q And payments from the city?

A That's correct.

Q Okay. And you understand that if you want to evaluate the present value of a future stream of income, you need to

apply a discount rate so that the future stream of income can be identified, correct? If you want to know what today's value is.
A That's correct.
Q Okay. And again you're someone who's done a lot of present value calculations in your careers, right?
A Yes.
Q And so if we put the future city payments to one side --
A Uh-huh.
Q -- and address only the relative risk of the charitable and state contributions.
A Uh-huh.
Q Have you got the context?
A I do.
Q You would agree that those are not very risky and therefore you would apply a low discount rate to those payment streams. You said that in the vicinity of 2 to 4%, correct?
A Yes.
Q And that's because the State of Michigan is a AA rated credit, correct?
A Actually I was referring in that part of my deposition to the contributions by the foundations themselves as well as the State of Michigan.
Q Okay. But in fact the -- the State of Michigan is a AA credit rating, right?

A Yes.
Q Okay. And the foundations in the DIA Corp. that you were referring to are also --
A Uh-huh.
Q -- well funded and wealthy donors and have no external debt and all of which imply less risk, correct?
A Correct.
Q And given all that, a lower discount rate should be applied to present value those grand bargain funds, the ones we've just identified. Then you would use on a more risky stream of payments, correct?
A Yes.
Q And the bulk of what the pensioners are receiving under the plan, including the grand bargain funds that we just discussed, are payment streams from less risky well funded contributors and that's why you believe a discount rate of 2 to 4% is appropriate in that instance, correct?
A But we didn't do a present value, so I don't understand why you're asking what the discount rate would be. We didn't do one here.
Q But -- but because I'm asking you to hypothesize as if you were an expert which indeed you are.
A I would use a low discount rate to evaluate the present value of those payments, yes.
Q And you would agree that pensioners are unsecured

creditors of the city, correct?
A Yes.
Q And you'd also agree that Class 9 and Class 14 creditors are also unsecured creditors of the city, correct?
A Yes.
Q Now by contrast so you can set the context, the recoveries of Class 9 and Class 14 under the plan are not being funded by the State of Michigan or the foundations, correct?
A No.
Q For example the COPS reserve is being funded by the -- the new B notes which will be issued with a total face amount of about $650,000,000, correct?
A Yes.
Q And those new B notes are going to be serviced solely by payments from the City of Detroit, correct?
A That's correct.
Q In fact the new B notes will be unsecured obligations of the city, right?
A Yes.
Q And so the new B notes are backed by nothing more than the city's promise to pay, correct?
A Yes. It's the same situation with the contributions of the foundations and the state. Those are unsecured promises also.

Q Right. The foundation -- I agree. I'm -- I think --
A Though they're not any different.
Q And there is no dedicated revenue stream or tax revenues supporting the new B notes, right?
A That's correct.
Q In fact the new B notes will be serviced again solely by the city's general fund cash flow assuming there is any, right?
A That's correct.
Q And so it's your view as to those new B notes that you would apply a 5% discount rate for purposes of determining their present value, correct?
A Yes.
Q Okay. And you would agree that the payment stream coming from a AA rated institution like the State of Michigan would be viewed by the market as less risky than payment streams from the City of Detroit, correct?
A Yes.
Q In arriving at your opinion that 5% is the appropriate discount rate in valuing the new B notes, you relied on materials appended to your expert report, correct?
A Yes.
Q And that's really the only reason why I put that in that stack. You may not have to look at it, but we'll see. And that included various yield curves, right?

A Yes.
Q And that included the MMA yield curve which is part of the Attachment 3 to your expert report. It's the one we looked at this morning and I think the Judge asked you a question about it, correct?
A That's correct.
Q But the MMA yield curve attached as -- in Attachment 3 is for AAA general obligation bonds, right?
A That's correct.
Q And you would agree with me that Detroit is -- is not a AAA rated credit?
A Not today.
Q Probably won't be that when it emerges from bankruptcy, correct?
A It's unlikely.
Q In fact and you don't even believe Detroit will be a single A rated municipality after it exits bankruptcy, correct?
A That's correct.
Q And that's because in your view it won't deserve it at that time, correct?
A It will be premature for it to get an A rating.
Q And the MMA yield curve attached in that Attachment 3, is for a ten year call bond, correct?
A Ten year part call, yes, that's right.

Q But the new B notes that FGIC is set to receive under the plan are not ten year call bonds, are they?
A No.
Q In fact the new B notes mature in 30 years and are not callable, correct?
A They're callable.
Q Oh, they are?
A The city can call those bonds if it wishes to. It's a 4% coupon for --
Q Well, that's true, okay. Right, we got that. But regardless of that again, it's your view that the appropriate rate to discount the new B notes which mature in 30 years, is still 5%, correct?
A Yes. The structure of the B note supports the conclusion that 5% is the appropriate discount rate.
Q Okay. And the interest rate on the new B notes is 4% for the first 20 years, and then 6% for the ten years following that, correct?
A Correct.
Q But the new B notes will only pay interest and they won't pay principal for the first ten years, correct?
A That's correct.
Q And you would agree that in general if a debt security does not amortize principal beginning at issuance, that security has a greater risk of principal not being repaid than

a security that does amortize principal from the beginning of issuance, correct?
A Are you asking me that in general, or specific to the City of Detroit?
Q I'm asking you in general.
A Well, in general that's true, but that's not the facts we have here, so I don't see the relevance.
Q And why is that not the facts we have here?
A Okay. Because the city's own plan and the governance mechanisms that will be put in place do not assume the city has any refinancing requirement for 40 years. And therefore the city's ability to pay this debt when due is very high.
As opposed to the general case where cities rely on refinancing debt rather than repaying it from cash flow. So the general case does not indicate in any way how the market received this paper by the City of Detroit.
Q So despite the fact that in this case there will be no amortization for a ten year period and therefore there will be a balloon amount that's due at the end of that ten years, or that will be payable at the end of that ten years --
A That's not correct. It's amortization beginning on a level basis beginning in year 11.
Q That's right. For the first ten years there will no --
A It's not --
Q -- amortization.

A And it's not a balloon payment.

Q And no amortization at all would begin until year 11, correct?

A That's correct.

Q So the fact that you have paid interest for ten years and you don't begin amortization until year 11, in your opinion doesn't affect your decision about the 5% interest rate, correct?

A No. In this case if you look at the balance sheet of the city over that period of time, the city will have paid down a substantial amount of the exit financing contemplated raised pursuant to this plan, it will have paid down other debt and will have less debt in year ten. And therefore the city's ability to service the remainder of the B notes will be higher than it is today.

Q Using your term potentially, correct?

A When you're talking about projections it's all potential.

Q That's right. And the new B notes are taxable, correct?

A That's correct.

Q And in general investors in the market for municipal bonds will demand higher yields for taxable bonds as opposed to tax exempt bonds, correct?

A Yes.

Q And so it would be reasonable to assume that the market may demand a discount on taxable new B notes to account for

the taxes that must be paid on those notes, correct?
A You -- you confused me. I don't understand your question.
Q So it would be reasonable to assume that the market may demand a discount rate on the taxable new B notes that is different than the -- than would be a non-taxable debt, correct?
A It's possible.
Q And again despite the fact that that is possible, it's still your view that the appropriate rate to discount the new B notes which are taxable is 5%, correct?
A Yes.
Q And the new B notes are not general obligation bonds, right?
A That's correct.
Q And to be clear there is no dedicated revenue stream or dedicated tax revenues supporting the new B notes, correct?
A Correct.
Q And again the holders will be exposed to the credit risk of the city, correct?
A Correct.
Q But again even taking all this into account, it's still your view that the appropriate discount rate for the new B notes is 5%, correct?
A Yes.

Q Now it's your view that the city will be able to access and obtain and close on exit financing on reasonable terms, correct? That's one of the opinions you gave today, correct?
A Yes.
Q And that was true both in your initial expert report which was July 8th, 2014, and in the supplemental expert report you filed just last Wednesday on September 24th, correct?
A Yes.
Q And the process of obtaining exit financing, I believe I was listening today correctly, took about two months, correct?
A Yes, officially.
Q And you contacted over 20 commercial lending institutions. You testified about the -- the process this morning, correct?
A Yes.
Q Okay. And as of today in your view the city has secured the best exit financing that it could obtain at this point, correct?
A Correct.
Q And as you testified this morning you ultimately selected Barclays to provide that exit financing, correct?
A We recommended to the emergency manager. He approved the commitment from Barclays.
Q Fair enough, good correction. And in your view Barclays proposal offered an optimal structure for the exit financing,

correct?
A Yes.
Q And it's also your view that Barclays proposal offered the best economic terms or pricing available in the market for the exit financing for the City of Detroit, correct?
A Yes.
Q Okay. And finally it's your view that the city's strong relationship with Barclays was a valuable factor in recommending them and in them supplying the exit financing, correct?
A Yes.
Q Now the interest rate for this exit financing is not fixed, is it?
A Not yet.
Q In fact the interest rate is floating right now and will not switch from floating to fixed rate until after the syndication process is completed and the city obtains a credit rating, assuming the plan of adjustment is confirmed, correct?
A Correct.
Q And as you testified earlier, you don't believe the city will obtain a single A credit rating at the point -- at the point that it does exit this proceeding, correct?
A No.
Q And in general while you -- while we don't know what the exact interest rate for the exit financing will ultimately be

because it's not fixed, you would agree that it's likely to be higher than the rate charged to those municipalities which do receive single A credit ratings, correct?

A No.

Q And why not?

A Because the credit of Detroit is a cost of capital to be set by the bars of this debt, not by the rating agencies. Rating agencies don't buy debt. The ratings are interesting, but they're not necessarily determinative on the cost of the financing.

Q They're not determinative, I agree. But they are a factor that's considered, correct?

A That will be a factor.

Q Okay. So now Mr. Buckfire, you would also agree that in general secured debt is less risky than unsecured debt?

A Usually that's the case.

Q And the pricing of debt is heavily dependent on this, correct?

A Yes.

Q And you would agree with me that it costs more to finance unsecured debt than it does to finance secured debt generally?

A Yes.

Q And the Barclays exit financing the city was able to obtain is secured by a lien on the income tax revenues of the city, correct?

A Yes.

Q And so because of that collateral the risk of non-payment by the city on the exit financing it obtained from Barclays is low compared to a city -- it would be lower compared to a facility without such collateral, correct?

A That was a complicated question. Would you mind --

Q No, no, no. Let me rephrase it. I would say strike that, but I don't think it works in Court.

And so because of the collateral that the city has with its exit financing, the risk of non-payment by the city on that exit financing is lower as compared to a facility without such collateral, correct?

A Yes.

Q And so the city obtained exit financing with a floating interest rate that has not yet been set. But the city assumed in its September 2014 projections that it would be about 5.75% interest and you testified earlier today that you think it could be approximately 5.5%, correct?

A Could be that.

Q Okay. And even though the best interest rate the city could negotiate for a long term secured debt was about 5.5% to 5.75%, it's still your belief that a 5% discount rate is both appropriate and a reasonable to value the recoveries to unsecured creditors who will receive the unsecured new B notes, correct?

A You're mischaracterizing my testimony.
Q Well, I'm asking it.
A I was very clear this morning. 5 1/2% is the rate the city would be paying on a private placement basis to Barclays given the current index rate and spread anticipated by their term sheet.
It's a variable rate. That's approximately the rate it would be upon consummation. It has nothing at all to do with the long term cost of the debt when placed at the end of the 150 day marketing process.
Q But you testified earlier, and I believe it was very early in your testimony, that the discount rate is a proxy for the costs the city should expect today to borrow new capital in the market, correct?
A On a long term basis.
Q That's right.
A This financing is being done pursuant to the exit from bankruptcy. There are -- it has not been re-underwritten yet. It has not been but we have not gone to credit agencies.
So effectively I would think about the "50 basis point differential" which I'm not conceding to you is the right number. Think about that as the premium one has to pay to get the support for a major underwriter to finance an exit. It has nothing to do with the long term cost of capital.
Q Now, is it your view that the 20 year payment of the new

B notes is not long term?
A Of course it's long term.
Q Thanks. I think I have very little left. And I promised you I wouldn't ask you questions repetitively as has happened in your deposition. But I do have one to ask you that's from your deposition.

I think at your deposition I counted that you were asked 11 times not by me, I want to say, Judge.

THE COURT: Okay.

Q The same question in a number of different forms. But let me ask it here. Mr. Buckfire, you did not prepare a dismissal analysis, did you?
A No.
Q Okay. Now one other question. You didn't study the problems that the city may have either retaining active employees or attracting new ones either, did you?
A No.

MR. SOTO: Thank you very much.

CROSS EXAMINATION

BY MS. O'GORMAN:

Q Good afternoon, Mr. Buckfire. My name is Debra O'Gorman. I represent one of the claimants MIDD. I want to ask you about recoveries to creditors under the plan.

The recovery percentage listed in the disclosure statement to the PFRS and the GRS are 59 and 60%, correct?

A I believe that's correct, yes.

Q And you were involved in putting together the -- the disclosure statement, correct?

A I don't have it in front of me. I believe your numbers are correct, but I don't have it in front of me.

Q Okay. Could we pull up Exhibit 3, Pages 51 and 52? The number is on the bottom 003. And if you could go to the next page. And this shows that the estimated recovery percentage to the PFRS is 59% in the disclosure statement, correct?

A That's correct.

Q And if you'd go to Page 54. And this shows that the estimated percentage recovery for the GRS is 60%, correct?

A Yes.

Q And you were involved in putting the disclosure statement together, correct?

A Yes.

Q And you did your best to insure that the information in the disclosure statement was accurate, correct?

A When requested to do so I did.

Q And that's because you were aware that the disclosure statement would be disseminated to parties entitled to vote on the plan such as the Class 10 and 11 pension claimants, correct?

A Yes.

Q And the disclosure statement was intended to provide them

with adequate information, to make an informed decision with respect to voting on the plan, correct?

A Yes.

Q Now I’d like to show you Attachment 1 to your original report which is Exhibit 462 017. And this is a chart that was attached to your expert report, correct? It’s the first document in your binder if it’s easier for you to look at it there.

A I just want to look a the hard copy for a minute. It’s kind of hard to read this. What’s -- what’s -- what’s the tab number?

Q 462.

A 462, okay. Okay.

Q I want to focus your attention on the column that reads reduction of claims.

A Yes.

Q And there’s percentages listed there. For example under COPS swap, 71%. That means the percentage reduction of the claim, so if you subtracted that number from 100 you’d get the percentage recovery for the claimants, correct?

A That’s correct.

Q And other than the COPS swaps the secured portion of the UTGO and secured portion of the LTGO, each of the claims listed here are unsecured claims, correct?

A Well, the GO are all unsecured as well, so I’m not quite

sure I understand your question.
Q Okay. So which claims are secured?
A Well, the swap -- frankly none of these claims are secured. They have tax -- they have tax requirements, but they're not secured.
Q Okay.
A So I'm not sure I understand your question.
Q Okay. If you look at the chart there's a row that reads pension UAL. Do you see that?
A I do.
Q On the retiree obligations?
A Yes.
Q And the percentage -- percentage reduction is 54%. Do you see that?
A I do.
Q And does that translate to a recovery estimation of 46% for those pension classes?
A On this page, yes.
Q Now is that -- and that combined number is lower than the 59 and 60% listed in the disclosure statement. Is that because it doesn't include the outside financed -- outside funding that goes to those classes?
A I'd have to go back and check the calculation. I haven't looked at this since July.
Q Well, did you perform these calculations to get to these

reduction of claim percentages?
A My team did along with Ernst & Young. But I haven't looked at this since July, so I can't answer your question.
Q Okay. Well, a similar chart is attached to your -- your most recent amended --
A Uh-huh.
Q -- or supplemental expert report.
A Uh-huh.
Q You can put that one back up. Did you look at the numbers again when you prepared your supplemental report just a few weeks ago?
A Yes.
Q Do you have any reason to believe that the city will not receive the outside funding it's expecting?
A Well, it's contingent upon the approval of this plan. So until the plan is approved, you know, one can't assume that that bargain will survive.
Q Were you aware that the city has taken the position that outside funding should not be included in the recovery percentage to compare it to recovery to other classes?
A I am.
Q And is that because the city doesn't believe those -- the outside funding sources are city contributions?
A That's my understanding.
Q But the question of whether it's appropriate for outside

funding to be considered for purposes of comparing percentages among various classes is really a legal question, right?

A It's certainly not a financial one.

Q Right. So you're not a lawyer so you're not able to really speak to that, correct?

A Correct.

Q And are you familiar with the pension restoration mechanism under the plan?

A In general but not specifically.

Q So generally do -- do you understand that pension cuts to retirees can be restored if investment returns exceed the target, right?

A Yes.

Q And do the numbers on this chart reflect any -- or take into account any pension restorations to the Class 10 and 11 claimants?

A Not to my knowledge.

Q Were you involved in the negotiations of the DIA settlement?

A Only in the initial stages.

Q But you're familiar with the terms because we discussed that earlier today, correct?

A Yes.

Q And the DIA settlement is dependent upon the transfer of the DIA art collection as well as real estate to a charitable

trust, correct?
A Correct.
Q And the DIA art collection and the real estate is owned by the city, correct?
A Correct.
Q And the city won't receive the proceeds of the DIA settlement unless city owned assets are transferred to the charitable trust, right?
A Correct.
Q And you're familiar with the terms of the state contribution?
A I know they're making a significant contribution to the trust.
Q Well, you were involved in securing the state contribution, right?
A Only at the early stages.
Q Okay. And the state contribution is conditioned on the funding commitments in the DIA settlement and Court approval of the DIA settlement, right?
A Correct.
Q So the conditions to the funding commitment for the DIA settlement are also conditioned to the state contribution?
A Correct.
Q And because the DIA settlement is dependent on the transfer of the DIA art and real estate in the city, the state

contribution is also dependent on the transfer of those assets, right?

A It's conditioned upon the approval of this plan of adjustment.

Q But the state contribution won't occur if the art and the real estate isn't transferred from the city, correct?

A If the plan is not confirmed there will be no transfer. There will be no contribution by the state. That's the predicate condition. That's the bargain I believe the state made as a condition of making its investment into the trust it formed.

Q Okay. So then the answer to my question is yes. The -- there will be no state contribution if the art and the real estate are not transferred from the city, correct?

A Pursuant to this plan of adjustment. We can't separate one from the other.

Q Are you aware that the city has argued that the actual percentage recovery to Class 10 and 11 claimants is actually lower than the percentages that we've just looked at in the disclosure statement?

A No.

Q Now if we can go back and look again at this attachment to your report. This is the line that says other unsecured liabilities. And then 89% percentage reduction. Yes, do you see that?

A I see that.

Q Okay. So this -- and does this correspond to the Class 14 general unsecured claimants in the plan, that line?

A I believe so.

Q And it shows the reduction in those claims at 89% which means a recovery of 11% to those -- that class, correct?

A Correct.

Q And there's also a row for notes/loans payable. Does that correspond to the Class 13 Downtown Development Authority claims?

A I believe so.

Q And the Downtown Development Authority was created by the Detroit city council, correct?

A Yes.

Q And it funds its activities through ad valorem taxes, correct?

A I don't know.

Q It's considered a component unit of the city, correct?

A I don't know.

Q But you would agree that Class 13 is made up of insider claims, correct?

A I don't recall exactly what those claims really were and what gave rise to them. It's been a long time since I looked at Class 13.

Q So you don't know, you can't tell the Court whether Class

13 claims are Downtown Development Authority claims?
A I haven't looked at that class in a long time, so I don't have any recollection right now what those claims really are and what gave rise to them.
Q Well, do you know what class Downtown Development Authority claims are included within?
A I'd have to go back and review the plan to answer that question accurately. I haven't looked at it in a long time.
Q Would you agree that the Class 13 claims, or the Downtown Development Authority claims are insider claims?
A No.
Q Well, the Downtown Development Authority was established by the Detroit city council, correct?
A I'll take your word for it. I don't recall the nature of these claims. I haven't looked at this in a long time and I'm sorry I can't answer your question directly.
Q Okay. Well, why don't we look at the disclosure statement at Page 41. I believe that's Page 41 of the document. Page 41. That's not it.

MR. CULLEN: What page of the document do you want to look at?

MS. O'GORMAN: It's Page 41 I think on the bottom of the document.

MR. CULLEN: Page 41. It's 56 --

THE COURT: Do we have what you want on the screen

now, Ma'am?

MS. O'GORMAN: I don't believe so.

THE COURT: Okay.

Q Can I read you something from the disclosure statement? It says in July 2013, Olympia proposed a project to build a new arena in downtown Detroit which would replace Joe Louis Arena as the home of the Red Wings along with a mixed use residential retail and entertainment district. The proposed project involved a cooperative arrangement Olympia and the City of Detroit Downtown Development Authority, the DDA. The DDA was created by the Detroit city council by ordinance number of 119H on May 20th,1976.

MR. CULLEN: Objection, for just a moment. Is -- is this meant to refresh the witness' recollection? How -- what -- what is happening here?

MS. O'GORMAN: Well, I'd like to --

THE COURT: Good question.

MS. O'GORMAN: He said he didn't recall what the DDA was and what the question --

THE COURT: What -- what are you trying to accomplish here?

MS. O'GORMAN: I'm just trying to question him about the DDA. He says it doesn't --

THE COURT: Well, but you're -- you're just reading. What -- why are you reading?

MS. O'GORMAN: To refresh his recollection.

THE COURT: Okay. That's not the proper way to do that. The way to do it is to show him -- hand him the document, let him read it and then ask him if that refreshes his recollection.

MS. O'GORMAN: It seems to be I've disconnected my notes. I will just move on for now.

Q If we can look back at the chart that was -- we were looking at before. Okay. Okay. I'd like to show the witness the disclosure statement, Page 99.

Do you see at the top of the page there is a discussion about the Downtown Development Authority?

A Yes.

Q And does that refresh your recollection about the Downtown Development Authority?

A No.

Q Does it refresh your recollection as to whether the Downtown Development Authority is the Class 13 claimant?

A No.

Q Okay. So going back to this chart, under the notes loans payable class. There is a reduction of 89% for those claims, so 11% recovery, correct?

A Yes.

Q And that's the same as the Class 14 general unsecured claims, correct?

A Yes.
Q And under the UTGO, the chart shows a reduction of 26%, correct?
A Yes.
Q So that means a recovery of 74% for that class, correct?
A Correct.
Q And under LTGO it shows a reduction of 66%, correct?
A Correct.
Q And that's a recovery of 34%, correct?
A Correct.
Q Now for the COPS it shows a reduction of 89%. That means a recovery of 11%, correct?
A Correct.
Q Of the recovery percentage is that different for COPS holders, correct in light of the Syncora settlement?
A Well, I'd have to go back to check the page of my supplement that shows what the differences would be.
Q Okay. So why don't we do that? Let's look at Exhibit A to your supplemental declaration. That's Exhibit 744 023 and 024. And looking at the percentage recovery for the COPS, it now has an 83% reduction in claims, correct?
A What's the -- is this the -- both Syncora and FGIC settling or just Syncora?
Q This is the Syncora and FGIC settlement, the first page.
A Okay. Because there are two pages.

Q Right. Then we'll talk about the second page in a moment. So there's an 83% reduction that translates to a 17% recovery to COPS class, correct?

A Correct.

Q And that recovery percentage is derived from the consideration offered to all the claimants in the COPS class which would include the B notes, the C notes, and the settlement credits, correct?

A Correct.

Q Are you familiar with the consideration to Syncora under the plan in the form of the tunnel lease, the development agreement, and the grand circus option?

A Yes.

Q And the chart doesn't take that into consideration in calculating the COPS recovery, correct?

A Correct.

Q Now if we could look at the next page which is the Syncora only settlement. Under their scenario it shows an 88% reduction to the COPS which would mean a 12% recovery, correct?

A That's correct.

Q And that 12% takes into account that the non-settling COPS parties will only get the 11% originally offered and Syncora will get some higher amount, correct?

A Well, they'll get their pro rata share of the B notes and

C notes and the other settlement assets.
Q Who will?
A Syncora will. I'm sorry, this is the Syncora settlement page.
Q Right. This is the Syncora only settlement page.
A Right. So this includes what they would receive pursuant to the settlement.
Q But the COPS the 12% here is a combination of the Syncora COPS claim and other COPS claims, correct?
A That's right.
Q So the 12% is the average that all of the COPS holders will receive, right?
A That's correct. That's why the earlier page shows the recovery would be 17% or rather 83% comparing it to this because we were seeing both Syncora and FGIC have opted in. This only includes Syncora and therefore the reduction is 88% not 83%.
Q Right. So even under this scenario Syncora would still receive the 17% because they've settled, correct?
A Well, this is an average across the entire class. If you're asking me what Syncora is receiving relative to its claim, I'd have to go back and check the math, but for this purpose we can stipulate they would receive a 17 cent distribution as a settling claim holder.
Q Okay. So 17% of their claims?

A Correct.

Q Now in June 2013 you participated in putting together a restructuring proposal for creditors, correct?

A Yes.

Q And if we could just put up the cover page of Exhibit 33. That's the proposal, correct?

A Correct.

Q And -- and under that proposal all unsecured claims were pooled together and given the same -- or the proposal was that they would all receive the same 12% recovery, correct?

A That was our initial proposal, that's correct.

Q And in that proposal you assume that all unsecured claims would be in the same pool, right?

A Correct.

Q And that included the pension claims, the LTGO, and UTGO claims, the COPS claims, and the general unsecured claims, right?

A You're omitting the OPEB claims. They would also be included.

Q Okay. All at 12%. And in fact you're of the view that outside of the Chapter 9 proceeding pension claims have the same remedy and rights as any unsecured creditor, correct?

A I'm sorry, could you repeat the question?

Q Outside of a Chapter 9, pension claims would have the same priority as any other unsecured claim, correct?

A That’s my understanding.
Q And so it’s purely a financial matter Class 14 unsecured claims have the same status as the Class 10 and 11 pension claims and the Class 12 OPEB claims, right?
A You’re referring again to the DDA claims, the convenience claims class? Just be specific what Class 14 are you referring to?
Q Class 14 of the general unsecured claims.
A Thank you. Yes, that’s correct.
Q But that’s not -- the proposal to creditors is different than what is now reflected in the plan, correct?
A After individual negotiations with our respective creditors we have different settlements with each, that’s correct.
Q Right. So -- so things changed materially, correct?
A Yes.
Q And that’s because certain unsecured creditors felt that they should get more than everybody else, right?
A At the beginning of the case, all of the unsecured creditors felt they should get more than everybody else.
Q Right because -- some -- some felt they were more special than others I think you said at your deposition, right?
A It’s like well be gone for creditors, that’s right.
Q And the pension recoveries to the plan as we looked at before are higher than the 12% set forth in June 2013, right?

A Correct.
Q And they're 59 and 60%, right?
A Including the contributions of the grand bargain, that's correct.
Q And the LTGO and UTGO recoveries are also higher than set forth in your June proposal, right?
A Yes.
Q And those increased recoveries are the result of negotiations and settlements, right?
A Yes.
Q And until the filing of the most recent plan, the COPS percentage recovery in the disclosure statement was -- was listed as 0 to 10%, do recall that?
A Yes.
Q And you believe that was justified because you felt that the COPS claims had a lesser status than other claims because they were indirect obligations of the city, right?
A That wasn't the only reason.
Q Excuse me?
A That wasn't the only reason.
Q But that was one of the reasons, right?
A Yes.
Q Now the -- but the general unsecured claims in Class 14 are made up of claims that are direct obligations of the city, right?

A That's my understanding.
Q So the same rationale for providing a lesser recovery to the COPS claims wouldn't apply to the general unsecured claims, right?
A No. I already testified there were other reasons why the COPS claims were viewed to have a lower recovery status than the other claims.
Q Well, what were those other reasons?
A Well, there were serious questions about whether the original transactions that gave rise to COPS were in fact legal. And therefore the allowed claim we provided in the plan for those claims addressed that factor in -- in terms of arriving at the estimated recovery percentage.
Q Okay. And those factors didn't apply to general unsecured claims, correct?
A Not to my knowledge.
Q You don't consider Class 14 to be subordinated claims, correct?
A No.
Q And if we compared the charts attached to your original report, you know, the first chart that you looked at, Exhibit 462, and then the charts attached to the amended report, Exhibit 744, the only changes between the two are the recoveries to the COPS class, correct?
A I believe so.

Q And the change reflects the enhancements that are offered to the COPS class under the new plan, correct?
A Yes.
Q And that's the result of a settlement with Syncora, right?
A Yes.
Q So out of all of the categories of unsecured claims the Class 14 general unsecured claims will see the -- receive the lowest percentage of recovery, correct?
A Yes.
Q And there's no official committee to advocate for the interest of unsecured creditors, is there?
A No.
Q I'd like to talk to you about the -- the new B notes. And the -- and then the exit financing. The exit financing has a taxable and a tax exempt piece, right? We talked about that?
A Yes.
Q And both of those pieces are secured by a lien on the income tax revenue of the city, correct?
A Yes.
Q And those tax revenues will be segregated into an account dedicated solely to that debt service, correct?
A Yes.
Q So the risk of non-payment on the exit financing is very

low, right?
A It's low.
Q And the pre-syndication short term interest rate you estimated to be about 5 1/2%, correct?
A Correct.
Q And then the syndication will be at a fixed rate when that occurs, right?
A Correct.
Q And short term rates are generally lower than long term rates, correct, as a general market principal?
A Yes.
Q So the post-syndication rate is likely to be higher than the pre-syndication rate which is a short term rate, correct?
A No.
Q Why is that?
A We're paying Barclays for the option to price the long term debt 150 days after the city emerges from bankruptcy. Think of it as a bridge loan.
So the price of the bridge loan which is 150 days long is really a function of the service we were receiving from Barclays to facilitate the emergence from bankruptcy. Then that financing will be replaced with long term permanent financing in a publicly placed transaction after syndication and credit review by the agencies.
So the rate on a short term basis is a bridge loan. It's

a different product, a different purpose than the long term financing.

Q Well, in your report you say that the post-syndication rate is projected to be 5.75%, correct?

A That is a assumption which is conservative in my judgment.

Q And 5.75 is higher than 5.5, correct?

A Yes.

Q Now under the plan Class 14 claimants will receive a pro rata share of the new B notes to be issued by the city, correct?

A That's right.

Q And you have not done an analysis of the value of the B notes from a market point of view, correct?

A No.

Q But you did do an analysis using a 5% discount rate to value the B notes for purposes of estimating percentage recoveries to classes receiving the new B notes under the plan, right?

A I'm not sure I understand your question.

Q Well, we talked before about the 5% discount rate that you used to value the recoveries to the -- to the claimants, correct?

A We didn't value recoveries to claimants. The 5% discount rate is the discount rate that we believe the city should be

able to borrow capital for at on a long term basis after emergence from bankruptcy. That's the discount rate.

I'd also further point out I testified that 5% should be thought of as the mid-point of a range around where the city should be able to borrow and it could be higher or lower than that in a range.

Q But you used the 5% discount rate to value the plan recoveries, correct?

A That 5% discount rate has been used consistently since the beginning of this process last year by E & Y after consultation with us for us for the purpose you've described.

Q Okay. And the -- the B notes have a 30 year maturity, correct?

A Correct.

Q And longer maturities generally lead to higher discount rates, correct?

A The discount rate is applied across this payment stream through maturity, but the repayment stream relative to the B notes include amortization which begins in year 11. So in fact the discount rate is the same discount rate across all of those payments.

Think of it as an average cost of debt. If you were to separate out the separate payments of the B note into one year increments, payments due in ten years should have a much lower discount rate than payments in 30 years. That's just basic

corporate finance.

Q So the --

A So the same 5% will apply across the instrument.

Q So the interest rate on the B notes is 4% for 20 years, and 6% for years 21 through 30, right?

A Correct.

Q And that's a lesser interest rate than the rate at which the city expects to obtain exit financing, correct? Currently the 4% is, right?

A It's -- it was a negotiated interest rate structure with creditors. They understood the city's desire to minimize debt service payments during the first ten years after emergence and we agreed that we would set a lower coupon for the first period and then let it go up to a higher number to compensate them for having giving us a below market rate for the first ten years.

So the coupon rate is somewhat independent from the discount rate. It's just a way of managing the city's feasability requirements along with the creditors' legitimate rights to have an instrument that is worth, you know, effectively near par.

Q All right. But you would agree that the 4% rate for the first 20 years is a below market rate, right?

A Today. But it may not be that way in a year or two.

Q Okay. And it's true that even though the exit financing

carries with it a lower payment -- that the exit financing carries a lower payment risk on the new B notes, right?

A Yes. And a large part of that is due to the shorter tenure of the exit financing.

Q And also the secured nature of the exit financing, right?

A Right.

Q Now you didn't perform any analysis of the post emergence credit rating of the new B notes based on frameworks that are used by credit rating agencies, did you?

A No.

Q And would you be surprised to learn that an analysis using those frameworks results in a rating of BA3 under the Moody's framework and BB under the S & P framework?

MR. CULLEN: Objection, foundation.

Q Well, are you aware of anybody performing that analysis?

A No.

Q Have you seen Mr. Spencer's report in this case?

A Yes.

Q Are you aware of Mr. Spencer performing that analysis?

A No.

Q You didn't read that part of his report?

A No.

Q Okay. And I'd like to ask you about the new C notes. Under the plan the city will issue C notes to settling COPS claimants, right?

A Yes.
Q And the C notes have different terms than the B notes, right?
A Yes.
Q And the C notes mature in 12 years as opposed to 30 years for the B notes, right?
A Correct.
Q And notes with shorter maturities would have less payment risk, right?
A Yes.
Q And the new C notes amortize principal with the first annual payment, correct?
A Correct.
Q And the B notes are interest only, right?
A Correct.
Q So the amortization schedule under the new B notes presents less of a risk of non-payment of principal than the amortization -- amortization schedule under the new B notes, right?
A I'm not sure I understand your question.
Q Well, the -- the C notes are -- the principal is being paid or part of it immediately and for the B notes it's not being paid for the first ten years, right?
A Yeah. But you have to take into account the source of the revenues being used to repay both obligations.

Q Well, the C notes are paid from parking revenues, right?
A That's right.
Q So a segregated fund for payment of the C notes exists, right?
A And the notes can also be repaid by the sale of the parking garages and the Joe Louis Arena which would mean it's no longer a burden on the city.
Q So the B notes are just general obligations of the city, right?
A They're unsecured obligations of the city, that's correct.
Q And the C notes are tax exempt notes, right?
A I'm -- I'm sorry, could you --
Q The C notes are tax exempt notes, correct?
A I believe so, but I have to go back and check.
Q And the B notes we know are taxable, right?
A That's right.
Q And so all in all you would agree that the C notes are significantly less risky than the B notes, right?
A I'd stipulate they're less risky. I'm not sure what significant means.
Q And the interest rates on the C notes is 5%, right?
A Correct.
Q And on the B notes it's 4% for 20 years, right?
A Going to 6%.

Q But 4% for the first 20 years, a below -- what you said was a below market rate, right?
A But that's irrelevant. The question is going to be what is the average cost of the debt. If it's 4% for the first period, going to 6%, the right way to think about it is what's the average cost of capital. Whether you pay a low rate at the beginning and a high rate later, it's the blended cost that matters, not the initial rate.
Q Have you calculated the blended cost of the B notes?
A I think it's around -- a little under 5%.
Q Well, it would have to be. It's a 30 year note and 20 years were 4%.
A But it's more complicated than that because the sinking fund payments begin in year 11. So you're -- for those payments you're not getting the benefit of the higher interest rate. So it's a little bit more complicated than the simple arithmetic average.
Q Okay. But we can certainly agree that the 5% rate paid by the new C notes is higher than the blended rate on the B notes?
A Again, taking into account the impact of the sinking fund, yes.
Q Okay. And the Class 14 claimants won't receive any of the C notes, right?
A Correct.

Q Now you mentioned that there were negotiations with certain creditors regarding the interest rates on the B notes?

A Yes.

Q Who did you have those discussions with?

MR. CULLEN: Objection to the extent it's calling for something under the mediation privilege, Your Honor. The mediation order.

THE COURT: That objection is sustained. But please answer the question other than as it pertains to mediation.

A I -- I can't answer the question other than in mediation, Your Honor.

THE COURT: All right.

MS. O'GORMAN: Okay. That's all I have. Thank you.

THE COURT: Okay.

MR. WAGNER: Your Honor, I have no cross.

THE COURT: All right. Any other cross examination? All right, sir.

REDIRECT EXAMINATION

BY MR. CULLEN:

Q I just have one. Mr. Soto asked you probably for the twelfth time, to affirm that you didn't do a dismissal analysis. Why?

A Well, the condition of the city prior to bankruptcy, I -- I thought addressed very well what would happen if the case had been dismissed, we'd be back to what we had before plus

we'd have the further burden of having to finance the run off of the swap settlement and find a way to pay the post-petition financing off.

Q And what relationship does that have to a dismissal analysis?

A Well, I think the answer is how would the -- how would the city be structured if we had a dismissal of the case. All of a sudden the 10,000,000,000 in claims that we had before would come back on. We'd have to service those somehow plus we'd have the obligation to be incurred during the case to pay.

MR. CULLEN: That's all I have, Your Honor

THE COURT: What is the disadvantage to the city of granting a security interest in the income tax revenues in this exit financing?

A There are two, Your Honor. The first one is -- and again in a theoretical sense. If there is a future default by the city under the terms of this new financing, in theory the secured creditors could block the receipt of income tax revenues over and above their debt service going into the general fund. That is risk. That's why they want the security interest of course.

The second is a more general issue that those income tax revenues are not directly available to the city for other borrowings. So if there was in fact a surplus of income tax

revenues over and above what we currently project, that surplus would not be available to service other debt directly because it would have been pledged to these creditors.

THE COURT: And -- and why did you decide that those risks were worth taking on the part of the city here?

A Well, when you look at the pro forma balance sheet of the city after hopefully the emergence from bankruptcy, the credit quality of the city will be dramatically improved from what it had been before and therefore the prospective risk of default which would lead to the worse case scenario of losing access to those revenues, I regarded and so advised the emergency manager it would be very very low.

In particular because the city's ability to use the re-investment budget on a short term basis to deal with any short term issues would mean that the city under almost any scenario would never have a default under the terms of this new debt. And therefore even though there's a theoretical risk it could lose access to those revenues, as a practical matter unless there was truly substantial and permanent impairment of the city's tax base, it was a risk worth taking in order to achieve the lowest possible cost of financing.

THE COURT: What impact might the granting of this security interest have on the city's ability to access credit markets in the future on an unsecured basis?

A Well, we took that into account, Your Honor, in our --

the design of the balance sheet at the beginning of last year. We wanted to put the city in a position where it would not have to go back to the markets for at least ten or 20 years. That's very unique among large American cities.

So even though we believe that having the secured financing eliminates a potential source of revenue to support unsecured credit potentially, the city is not anticipated to be a borrower for a very long time.

Now that means that the time when the city should want to get rid of the security interest is when the quality of the city has so improved, call it now a single A borrower that as soon as it can call those bonds and refund them it should.

THE COURT: When is that?

A I believe under this financing we have five years. I remember there are two different pieces. The taxable portion as I recall, matures in year eight. But it's supposed to be the smaller part of the facility. And then the taxes portion matures in 2015 -- I'm sorry, 15 years, excuse me.

So that means that the city in a relatively short amount of time for a city that is, should be able to redeem or call that debt if it deems it appropriate and replace it with unsecured bonds. And it doesn't have to do anything for the first ten years which is one of the reasons we're confident that this is the right financing for the city.

THE COURT: Did you solicit requests -- I should say

proposals, did you solicit proposals for unsecured financing?

A We did. In our original request for proposal we actually had a sentence that said and we are interested in any other proposals you may wish to have on an unsecured basis. We did ask the market for that.

THE COURT: But that request for proposals did specifically offer this security interest, didn't it?

A It did.

THE COURT: Well, why would any creditor offer you unsecured credit if you were offering to give them a secured -- a security interest?

A They wouldn't because we had already given the swaps and they knew that. We'd given it to the post -- post-petition financing source. So they knew we already granted it, they weren't willing to let us give it up in exchange for this plus the facts and circumstances of this offering are that we had to raise this money while we're still in bankruptcy.

So we don't have the benefit of a prospective and formal credit rating process which is now anticipated as part of this exit financing. We had to have certainty of financing to exit bankruptcy. But again we mitigated that by the fact that within a relatively short period of time if the city's condition has improved, it will have the right to call these bonds and eliminate the security feature and replace it with unsecured borrowings if it's appropriate.

THE COURT: Okay. But what -- what is your judgment on whether exit financing is available on an unsecured basis? I need an answer to that question because of the operation of Section 364 of the Bankruptcy Code as -- as you undoubtedly know.

A I do understand that, Your Honor. Unsecured financing I believe would be available to the city but at a higher cost than we've been able to obtain from this process.

THE COURT: Do you have an opinion on how much higher cost?

A Yes. I think based on this structure of this debt, if you'd let me stipulate to that.

THE COURT: Uh-huh.

A And without the security feature, we -- the city might have had to pay anywhere from 100 to 150 basis points more for unsecured financing. Again, based on these specific facts.

THE COURT: Uh-huh. And what does that translate to in terms of dollars?

A Well, assuming the exit financing is $325,000,000 and let's assume, if you don't mind, that the cost of the debt on a long -- on a short term basis because starting with the variable piece is 7%. Because remember I indicated before 5 1/2 is where they were on a secured basis, add that. So that would be an incremental cost of 150 basis points of call it $6,000,000 a year.

THE COURT: How much, sir?

A Six million dollars a year. Three hundred and twenty-five million times 150 basis points. It's actually less, I'm sorry.

THE COURT: I'm sorry?

A It's less, I'm sorry. I did that too fast.

THE COURT: What is -- what is your best judgment on the dollar amount then?

A It would around -- a little under $5,000,000. If one had to do that. But remember that's a short term bridge facility rate. I'm not stipulating what the rate would be paid by the city to place public unsecured debt given the facts and circumstances of the case.

THE COURT: Well, do you have an opinion on that question?

A I do. I think that a -- a properly organized road show, presentation of the city's credit by the responsible officers of the city supported by an effective credit rating agency approval process, I believe will allow the Detroit to borrow at below those rates.

I believe this credit will be well accepted by the marketplace because when you look at the balance sheet of the city and the prospective financial condition of the city, I think it's actually a much better credit on the numbers than many other cities that might even have a higher credit rating

to have not dealt with their unfunded pension and OPEB problems the way Detroit has done.

And that plus the fact that Detroit uniquely does not have to go back into the market to borrow to repay maturing debt which every other city routinely has to do. There's another important element that supports the credit story.

And therefore despite the fact that the new Detroit story has not yet been vetted by experience, the fact that we are emerging from a very difficult process, I believe that those factors are very important plus the fact that Detroit will have an oversight commission which is something it has not had before.

The fact that market conditions in the municipal market today are very favorable for issuers. There's a lack of good quality investment opportunities for municipal buyers. I believe all those factors would lead one to conclude that the exit financing will be priced below the levels indicated in our projections, but I can't tell you exactly what it will be. But I believe it will be lower. This is a much higher credit than the agencies would recognize.

THE COURT: The opinion you just gave me assumes a security interest in the public financing?

A No. You asked me not to.

THE COURT: Okay. I just wanted to clarify that. But -- but again to -- to be sure about this --

A Uh-huh.

THE COURT: The exit financing that the city wants me to approve for the public piece of it, does include security?

A Yes.

THE COURT: So then the question becomes why should the Court approve that longer term exit financing with security when it appears from your testimony it's not necessary for the city to get a good interest rate?

A Well, Your Honor, offering security always -- well most of the time allows the issuer to borrow at the lowest possible cost. So in order to minimize the borrowing costs, adding that security feature which I've also testified does not have any immediate consequences for the city's long term ability to sustain itself, to us seems like a reasonable thing to do.

THE COURT: All right. So what -- what is your judgment about what the additional borrowing cost would be on the public offering without security?

A If I could draw an analogy, Your Honor. In the --

THE COURT: Well, I'd just like you to give me a number.

A I'm sorry. This is on the public place pricing.

THE COURT: Yes, please. Then I'll let you give me an analogy. But I want to start with your number.

A Sorry. This is such a unique situation. I'm -- okay.

THE COURT: Right. But you're the city's witness.

A I believe that if the public market were offered the opportunity to price the exit financing on a secured versus unsecured basis and that's the only difference.

THE COURT: Uh-huh.

A And everything else is as we've stipulated.

THE COURT: Uh-huh.

A The difference would be anywhere from 25 to 50 basis points and no more. And that's drawing an analogy if I may be permitted to point this out in the corporate market, the normal spread from secured to unsecured senior paper is around the same range.

THE COURT: Uh-huh.

A And I'd also stipulate that the short duration of this financing, the importance of the oversight commission to insure the credit will sustain itself are very important factors that would have to be considered by the market.

THE COURT: Uh-huh. So again I ask what the dollar savings is approximately.

A Uh-huh.

THE COURT: By the offer of security.

A Well, 50 basis points if you could just assume that's the end of that spread.

THE COURT: Okay.

A That would be not an immaterial note. That would be 1.13

million dollars a year for on an average of ten years. That's a lot of money.

THE COURT: So that's one tenth of 1% of the city's $1,000,000,000 annual budget?

A Everything we can save matters, Your Honor, yes.

THE COURT: But the answer to my question -- my math is right?

A Yes, your math is right.

THE COURT: I need confirmation of that, you know, I'm -- I'm not an accountant. And your judgment is that that $1,000,000 a year approximate savings to the city --

A Uh-huh

THE COURT: -- is worth it because the city doesn't give up anything that it might need later by granting this security interest?

A Yes.

THE COURT: If the spread between secured and unsecured were 25 basis points instead of the 50 that we hypothesized here --

A Uh-huh.

THE COURT: -- the savings would drop to 500,000 a year?

A That's correct.

THE COURT: All right. That's all the questions I have. Any follow up on either side?

MR. CULLEN: Briefly, Your Honor.

THE COURT: Sure, go ahead.

BY MR. CULLEN:

Q In response to this topic we were just discussing, if I could see Page 12 of City's Exhibit 642. That's 11. Twelve if I could, please.

All right. In the first column there it says, Barclays alternative 2, unsecured. What -- what does that reflect, sir?

A Well, as I've already testified, we did ask people to give us alternatives that might be unsecured and Barclays provided this one as part of their submission.

Q And if you'll -- if you could look down that list of factors, could you tell me or do you recall why you didn't -- in addition to anything you told the Judge, why you didn't pursue this one at that time?

A It was too expensive.

Q And could you --

THE COURT: Can you be more specific about that?

A I'm sorry. If you look at the third box from the top which is pricing.

THE COURT: Uh-huh.

A You'll note that they were proposing -- again, this is the initial responses we received back. That they would price taxes and bonds at 7 1/4, assuming an 11 year maturity. And

if you go back to the other prior page which shows alternative 1 -- no, you went the other way. Right, right. No, there you go.

You'll see that the pricing they're reflecting on taxes and paper was much lower. They were effectively proposing 5.75 for ten year paper. So the spread that they were looking to was called 150 basis points.

Which is again, I testified earlier that the spread might be 150 basis points, the unsecured and secured and that's where that came from. Because they're proposing 7 1/4.

THE COURT: No, but is this on -- is this on the private placement, or is this on the subsequent public placement?

A Well, this was their public placement idea. And remember this is before we went back to negotiate with them on the structured delayed offering. So this was just indicative pricing in July.

THE COURT: Uh-huh.

A When we received initial proposals back.

THE COURT: Okay.

A And the only interesting about this is --

THE COURT: All right. So your -- your testimony is that what Barclays -- Barclays offered in terms of secured versus unsecured, the pricing difference is 200 basis points approximately.

A At that point, yes.

THE COURT: At that point.

A Yes.

THE COURT: But here today your thought is that if you actually were to go in the market --

A Uh-huh.

THE COURT: The differential would be more like 25 to 50?

A Yes. Assuming a properly conducted road show and credit process, yes.

THE COURT: Well, is there any reason to suspect that assumption?

A No.

MR. CULLEN: Thank you, Your Honor. That's all.

THE COURT: All right. I think that's all we'll do for today. Sir, you are excused.

MS. O'GORMAN: Your Honor, could I ask a question about --

THE COURT: Yes. Yes, of course.

RECROSS EXAMINATION

BY MR. SOTO:

Q Just so I understand it, if you could put --

THE COURT: Just get -- get to the microphone and then start your question.

MR. SOTO: Sure. Ed Soto.

Q I just want to understand what we're looking at. In the -- what you'd call the unsecured one, can you explain -- I mean -- and I'm sure you can, Mr. Buckfire, but I'm trying to -- that's the secured one. Now you're going to go the one you first testified about which you said was the unsecured alternative.

MR. CULLEN: Page 12.

Q Which is city -- which is City Exhibit 642. There it is. So -- so as I'm looking at it the difference between the secured and the unsecured, the secured was directed tax revenue was securing it, correct?

A Correct.

Q And what you're calling the unsecured would be a limited tax obligation bond so that there would be a limitation on what taxes were obligated to pay it.

A That's right.

Q But it still wouldn't be a generally -- it wouldn't be in the same form as the new B notes, a general fund bond, correct?

A Correct.

MR. SOTO: Thanks. Thank you, Your Honor. No other questions.

THE COURT: Okay. You are excused, sir.

A Thank you, Your Honor.

(WITNESS KENNETH BUCKFIRE WAS EXCUSED AT 4:57 P.M.)

THE COURT: Is there something you wanted to bring up?

MR. SHUMAKER: Your Honor, I know we've been through this afternoon I'm sorry to bring up some housekeeping, but I do think it's important for -- for notice reasons --

THE COURT: Sure, go ahead.

MR. SHUMAKER: -- to give you where we are on the witness order. The -- the UAW day going away and then today's mysterious lighting snafu has kind of wreaked a little bit of havoc with our schedule.

We were actually thinking that Mr. Orr would have spent most of today on the stand. We have a couple of witnesses tomorrow that with your indulgence, we would put on before Mr. Orr took the stand. And we wanted to again ask your blessing and then notify the objectors of that.

The two individuals are -- are Mr. Gilbert which we would hope to do first. And then we know that there are two arguments tomorrow. The -- the motion to dismiss the -- the counter claims in the -- in the swaps, and then the MIDD motion perhaps those --

THE COURT: Well, there's a little more than that. There are a series of objections to claims. Now I don't expect them to take very long, but we do have them scheduled.

MR. SHUMAKER: Right. And -- and then what we were hoping to do is -- is Mr. Stibitz the state witness --

THE COURT: We also have a motion for relief from stay by AFSCME for tomorrow.

MR. SHUMAKER: So that's a lot of arguments. So that's -- so however --

THE COURT: That's scheduled for -- for 10:00. I actually thought I could make my way through all of those and do lunch between 10:00 and 2:00. So we were going from 8:30 to 10:00 and then pick it back up at 2:00.

MR. SHUMAKER: And I'm sure Mr. Gilbert could get on between 8:30 and 10:00.

THE COURT: Okay.

MR. SHUMAKER: And then if we -- if Your Honor was going to do those arguments, then Mr. Stibitz who goes out of town on Thursday and Friday, if we could slot him in before Mr. Orr took the stand. And then Mr. Orr would perhaps complete tomorrow, roll into Thursday, and then Mr. Rapson who also needs to go Thursday we'd do that.

And in part we're doing this because the objectors are not in a position to take Mr. Doak's -- or to cross examine Mr. Doak because he was being deposed today. So we were going to shift him to Friday, but start Friday with Mr. Penske who also is hoping to go at -- at the beginning of that day.

As you know, it's the half day. And then the -- as it currently looks, Monday the 6^{th}, Madame President Jones and -- and Mayor Duggan would go on -- on Monday and then that would

again, subject to all the usual reservations, that would be when the city would rest its case.

THE COURT: Okay.

MR. SHUMAKER: And then I --

THE COURT: That's fine with me. Any comments from the creditors on that order of proceeding? Sir?

MR. WAGNER: Yes, Your Honor. Just looking at the schedule aside from the fact that the 14^{th} is twice. I assumed this --

THE COURT: Aside from -- aside from what fact, sir?

MR. WAGNER: He's got the 14^{th} day on twice. I know we've been here so long it feels like Groundhog Day, but I'd prefer not to -- I'd prefer not to repeat a trial day.

The 7^{th} -- if this schedule holds, I assume Ms. Kopacz would testify as Your Honor indicated at the close of the city's case. I assume that would be on the 7^{th}.

THE COURT: It -- it would. And I have -- I have notified her of the possibility that her testimony might be on Monday or Tuesday.

Tuesday we need to conclude at 1:00 so I can get to the NCBJ conference. By the way someone told Ms. Kopacz that we are not in session the 14^{th} through the 17^{th}. That -- we need to quash that rumor right now. We are in session. The 13^{th} is Columbus Day and a federal holiday. But the rest of the week we're working.

MR. SHUMAKER: Yeah, that's fine. I -- I should probably note now that the 16th and the 17th, I will be out for the last of the Jewish holidays. But I'm hoping that the two witnesses who I would have to cover Ms. Thomas and Mr. Fornia would go on the 14th.

THE COURT: Okay.

MR. SHUMAKER: Or the latest on the 15th.

THE COURT: All right. Any other comments? Yes, please. Okay. No -- no apologies.

MR. PEREZ: So, Your Honor, since I'm the person who is going to be putting on most of our affirmative case, should I plan -- and -- and Mr. Wagner is going to go first. His -- his two witnesses will go first. Mine will be the third, fourth, and fifth witnesses.

Should -- should we plan then for the 14th, to start on the 14th and tell them not to be here for the 7th since we -- I didn't realize the 7th would --

THE COURT: I think that's -- I think that's safe at this point. Absolutely.

MR. PEREZ: Okay. So we'll plan that. Thank you, Your Honor.

MR. SHUMAKER: Your Honor, two wild cards. One is UAW day continues to sort of float out there. And I don't know when that might be slotted. And obviously that -- that continues. And then the pro se objectors, are they going

after the city's case or at the end of --

THE COURT: The end. The end of everything, yes. Did you all get your evidence stipulation worked out?

MR. SHUMAKER: I had that same question but I haven't heard back from the objectors yet. The 144.

MR. SOTO: Right. We -- remember we had till tonight to finish it, Your Honor.

MR. SHUMAKER: Oh, yeah, I wasn't --

THE COURT: All right. So you'll report to me tomorrow, please.

MR. SHUMAKER: Yes.

THE COURT: Okay. I had promised you the difficult discussion on reducing your time allocations, but in light of the hour we will adjourn that until tomorrow.

MR. SHUMAKER: Sure. Thank you, Your Honor.

THE COURT: For some reason I just made Mr. Soto very happy.

THE COURT: All right. We'll be in recess.

MR. WAGNER: Your Honor, actually just one more point.

THE COURT: Yes, sir.

MR. WAGNER: I assume from this schedule that there's now no one from the may call list who is going to be called by the city.

MR. SHUMAKER: We'll be making that decision this

week. So we would know. If it would be, it would be somebody on that Monday.

THE COURT: The sooner the better because it's my witness that would be most impacted by that decision.

MR. SHUMAKER: Understood, Your Honor.

THE COURT: All right. All right. Now we'll be in recess.

MR. SHUMAKER: Thank you, Your Honor.

MS. O'GORMAN: Thank you, Your Honor.

THE CLERK: All rise. Court is adjourned.

MR. CULLEN: Thank you, Your Honor.

(Court Adjourned at 5:04 p.m.)

We certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/Deborah L. Kremlick, CER-4872 Dated: 10-5-14
LaShonda Moss
Kristel Trionfi